6

From Messrs Touchet & Irving. T. Hargrave

708 i 26.
60

REMARKS

ON THE

PETITION

OF THE

BRITISH INHABITANTS of *Bengal, Babar,* and *Oriſſa,*

To PARLIAMENT.

BY THE

Gentlemen of the COMMITTEE at CALCUTTA, appointed to tranſmit the PETITION to ENGLAND, and tranſact the Buſineſs appertaining thereto.

REMARKS

ON THE

PETITION

OF THE

BRITISH INHABITANTS OF [illegible]

and Others,

To PARLIAMENT.

REMARKS
ON THE
PETITION
OF THE
BRITISH INHABITANTS of *Bengal, Babar, and Oriſſa,*
To PARLIAMENT.

PETITION.

PAR. 1. *THAT your Petitioners obſerved with the deepeſt Concern and Affliction, that at the paſſing of the Act of the* 13*th* Geo. III. *intituled,* An Act for eſtabliſhing certain Regulations for the better Management of the Affairs of the *Eaſt India* Company, as well in *India* as in *Europe*; *and previous to it, very erroneous Reports had been propagated, and injurious Ideas entertained, of the Principles and Practices of the* Britiſh *Subjects reſiding within*

COMMENT.

PAR. 1. THE *Britiſh* Inhabitants of *Bengal* furniſh a ſtriking Example of the Facility with which the moſt cruel and unjuſt Imputations may be fixed upon a Body of Men. From the Volumes of Calumny that were publiſhed, and the endleſs Invectives dictated, by Self-intereſt, Party Spirit, or Reſentment, and circulated with induſtrious Diſpatch, the Failings, Errors, and perhaps the Crimes, of a few Individuals were ſelected,

PETITION.

within these Provinces; from which it was inferred, that they required more rigorous Restraints and Coercions than have been usually imposed upon Englishmen.

2. *THAT your Petitioners, knowing such Reports, when applied to the Community, to be void of all Foundation in Truth, did flatter themselves that Time, better Information, and their own loyal and obedient Conduct, would have convinced their Enemies, and the whole* English *Nation, of the Injustice and Cruelty of these Suppositions, and have excited the known Candour of the* British *Parliament to frame in their Wisdom such Ordinances and Regulations as were better adapted to the real Circumstances and Situation of your Petitioners.*

COMMENT.

and held up to the publick View as the Vices of the Community; without the smallest Regard to the peculiar Situation in which they acted, or to the Climate, Manners, or Customs of the People amongst whom they lived, and to whose Prejudices and Understandings they were obliged to adapt their own Conduct and Feelings.

2. IT does not appear that, in the Heat of Passion or Prejudice, an Idea was ever entertained that the People who, by the most generous and successful Efforts, had established a Dominion in *Asia*, the Source of Wealth, Honour, and Power, to the Mother Country, might possibly be innocent, or that what appeared criminal in them might arise only from the false Medium through which their Conduct was represented, by comparing it with Cases and Circumstances wholly dissimilar.

3. Credulity adopted what Calumny had propagated, till a Belief amongst the People of *Great Britain* became universal, that their Fellow-subjects, in this Part of the World, had renounced every Sentiment of Moderation, Justice, and Humanity, and so far forgotten their Duty to their Employers, and their Obligations to the Laws, as to adopt a System of Cruelty and Oppression, and carry it openly into Practice. Forgetful that we were

were their Children, or their Countrymen, educated in the ſame Principles, and that every Diſgrace or Opprobrium which they heaped upon us, reflected Diſhonour on the *Engliſh* Nation at large, and would equally affect their Honour and good Fame, as well with Foreigners as with Poſterity.

4. We would willingly forget that ſuch Reports ever exiſted; but, painful and diſagreeable as the Recollection muſt be, we are obliged to ſubmit to it. Unhappily for us, the Prejudices which were founded upon them ſeem to acquire new Vigour, and to be transferred from the Objects againſt whom they firſt prevailed, to every Succeſſion of *Europeans* that have ſince come to *India*, as the ſame Intereſts and particular Views, the ſame Deſire to ſupplant us, which originally fomented theſe Prejudices, continue to operate and gain Ground.

5. It is not our Province, nor is it our Intention, to take upon ourſelves the Defence of every Individual; let the Perſon accuſed ſtand forth, and vindicate himſelf: but we mean to combat thoſe general Aſſertions that affect the Community at large; and if in any one Inſtance we ſhall be able to expoſe their Falſehood, or the Malice of our Enemies, Candour will, we hope, reject every Accuſation founded on Invective alone, without the Support of Facts or other Proof.

6. It

COMMENT.

6. It has been asserted *, "That "the *English* in *Bengal* have un- "necessarily involved themselves in "War from Motives of Ambition "and Avarice, and that their Vic- "tories have been disgraced by Acts "of Cruelty and Rapine."

7. It will not lead us far back, to revert to the Origin of the Wars carried on in *Bengal*, nor require a long Discussion to trace them to a Conclusion.

8. In the very Infancy of the Settlement, before the Servants of the Company had entertained an Idea of territorial Property and Possession, a young Tyrant, flattered by his Courtiers into a Belief that his Arms were irresistible, and that *Calcutta* contained immense Treasures, which would become the Prize of an easy Conquest, wantonly, and without any real Provocation, rushed into a War with a Body of Merchants whose Industry had poured new Riches into his Kingdom. His Life became a Sacrifice to his Folly; and Success beyond all Expectation crowned the Arms of the *English*, who had fought to secure their Property, the Rights of their Constituents, and their own Lives.

9. The War with *Cossim Ally Khan*, was brought on by a Train of Events which it is unnecessary to trace at this distant Period. Our Countrymen were unfortunate, but

* By several anonymous Writers.

were

were not criminal. It commenced with Acts of wanton Cruelty on his Part, and ended with the Loss of his Kingdom, and additional Power and Glory to our Countrymen.

10. Nothing can form a more ſtriking Contraſt to theſe Tranſactions, than the Moderation obſerved by the *Engliſh* after the firſt and every ſucceeding Victory. In the Moment of Succeſs the Sword was ſheathed, and the Conquered, accuſtomed to experience all the Horrors of War after a Defeat in Battle, were aſtoniſhed to find their Lives unattempted, their Property and Effects ſecure, their Women unmoleſted, and regarded by the Conquerors as ſacred and inviolable. Though exaſperated by wanton and cruel Acts of Tyranny, the *Engliſh* never carried with them into their Wars the Idea of Revenge; and the Reputation gained by their Valour, was equalled by the Fame of their Clemency.

11. We call upon our Enemies to produce one Inſtance of a Native put to Death after Victory, or of a Town expoſed to Pillage; if it can be produced, we ſubmit to Judgement; but if it cannot, we hope to ſtand acquitted, and that we ſhall not in future be compared to the *Spaniards* in *America*, whoſe Progreſs is a Line of Deſolation marked with the Blood they ſpilt. When the Voice of Prejudice is

COMMENT.

filent, and the Aſperſions of Calumny have been obliterated by Time, Hiſtorians will do that Juſtice to the Conquerors of *Hindoſtan* which their Countrymen deny them at preſent; and whilſt the Names and bloody Maſſacres of *Tamerlane* and *Nadir Shah* are conſigned to Infamy and Deteſtation, the *Engliſh* Clemency and Moderation will be held up to future Ages as ſingular Examples for Admiration.

12. Amongſt other Calumnies, it has been * inſinuated or aſſerted, and in ſome Degree believed, "that the *Engliſh* were concerned, "directly or indirectly, in murder-"ing ſeveral Nabobs."

13. We ſtate this infamous and abſurd Accuſation in its ſtrongeſt Terms, and meet it openly. As no Evidence has yet been laid before the Publick that it was founded in Truth, our Obſervations in Reply ſhall be conciſe. The only Perſons who can be alluded to, are *Meer Jaffier*, and his Sons *Nidjim ud-doulah*, and *Syfeud-doulah*. It is ſomewhat remarkable, that this Idea ſhould have been adopted by *Engliſhmen* alone, without having ever entered into the Imagination of a Native. It is now notorious, that *Meer Jaffier* died at the Age of 70, after a Life ſpent in Toils and Fatigue: Some of the Authors who have thrown

* Colonel *Dow*, and Mr. *Bolts*.

out

out theſe Inſinuations, were in this Country at that Time, and ought to have been better informed.

14. *Nidjim ud-doulah*, the Son and Succeſſor of *Meer Jaffier*, died the ſame Year; ſuddenly it is true, but without the moſt diſtant Suſpicion of Violence having been employed to remove him; the Cauſe of his Death was a Surfeit.

15. The laſt in the Liſt, and the Succeſſor of the two preceding Nabobs, *Syfed ud-doulah*, died in the Year 1770 of the Small Pox, at a Time that Diſorder raged throughout the Country with aſtoniſhing Violence.

16. The Facts, as we have ſtated them, are now well known and admitted, and there are many People in *England* ſufficiently acquainted with them to give Teſtimony to their Truth.

17. *Mobarik ud-doulah* is ſtill living, and has been upon the *Muſnud* nine Years, notwithſtanding the Prophecies to the contrary.

18. * "The Nabob of *Bengal* "has been conſidered as a political "State-Engine merely, which was "ſet up and worked to Purpoſes of "private Convenience only."

19. It is a well known Fact, which we do not wiſh or pretend to deny, that ever ſince the Reſtoration of *Meer Jaffier*, after the Expulſion of *Coſſim Ally*, the Influence of the *Engliſh* has been greater and more

* Colonel *Dow*, and Mr. *Bolts*.

extensive than that of the Country Government, and that if it had been consistent with Policy and Prudence, the *English* might have taken the Dominion of this Country into their own Hands intirely, without suffering any Participation.

20. A Power so great and so flattering to the Eyes of Ambition, so replete in Appearance with endless Advantages, was a Temptation to the Conquerors that nothing but sound Wisdom could have enabled them to reject; and the more we reflect upon the real Use of the nominal Power of the Nabob, in the actual Circumstances they then were, the more Reason we shall have to applaud the Moderation observed by the *English* in the Exultation of Victory, when the cooler Dictates of Prudence are seldom heard or respected.

21. For when it is considered that the *Mahommedans* preserve the highest Veneration for their native Princes, even though unfortunate; that they are led by the Pride of former Conquests, recorded with a fond Partiality, and the intolerant Spirit of their Religion, to entertain the highest Ideas of their own Superiority, and Contempt, and even Hatred, for all other People; that they could not see the Abolition of their own Power and Influence, and the Destruction of their own Empire, without Regret, and an anxious Desire of Revenge; that

COMMENT.

that to ſubmit to the Government of a mere handful of Strangers, by them deemed Infidels, differing from them in Complexion, Language, Religion, Laws, Cuſtoms, and even in Dreſs, muſt be an unceaſeing Source of Sorrow, Diſcontent, and Indignation; we muſt acknowledge that nothing could contribute ſo effectually to ſecure the Dominion of the *Engliſh*, as to hold up the Native Princes with an Appearance of Authority, and a Shew of Splendour, that flattered the Natives and deceived them; whilſt it left them ſome Means at leaſt to relieve and maintain the Numbers who had derived their Support from the former Government.

22. The Novelty of our Arms and Diſcipline, with ſome extraordinary Inſtances of Courage and Perſeverance, impreſſed the Natives with an Idea that *Europeans* had ſuperior Powers of Mind and Body. But theſe Ideas muſt, from a more familiar Intercourſe, have mouldered away in Time, and the Natives, who from natural and unſurmountable Obſtacles, can never become loyal or affectionate Subjects to any *European* Nation, would have ſtarted up into Reſiſtance, unleſs an Idol of Power had politically been raiſed which attracted their Veneration and Reſpect. Seduced by a fond Partiality to conſider this oſtenſible Prince as their real Sovereign, they forgot for a Time that

they were deceived; that the Government, under which they were born and had lived, no longer exiſted; and thus loſt the favourable Opportunity of cruſhing in its Infancy a new Dominion, which continued every Day to gain freſh Strength and Vigour.

23. The Power of the Nabob was not however wholly ideal; the Adminiſtration of Criminal Juſtice, and ſome other Branches, remained with him, and his miniſterial Officers; and the *Engliſh* never interfered further in this Department, than to ſee the Execution of ſuch an important Branch of the Government duly adminiſtered.

24. Theſe Conſiderations alone, we truſt, will ſufficiently evince the abſolute Neceſſity there was for keeping up the nominal Power of a Nabob; we might add to them the Uſe the *Engliſh* have derived from it in another Point of View, in preventing the Encroachments, and obviating Diſputes with foreign Nations.

25. * Another Accuſation is, "That the *Engliſh* have themſelves "been guilty of the groſſeſt Acts "of Fraud and Miſmanagement, "and have connived at ſuch Acts "committed by their Miniſters and "Servants."

* *Dow*; *Bolts*; anonymous Publications; General *Burgoyne*'s Speech in the Houſe of Commons.

26. In

COMMENT.

26. In Oppoſition to this Accuſation, we will ſtate the Proſperity and Succeſs of the *Engliſh Eaſt India* Company; Events to which Hiſtory cannot furniſh any Parallel. It is in *Bengal* we muſt look for the Foundation of this Proſperity, which, once eſtabliſhed by the Servants of the Company, has, under their Patronage, grown to ſuch an amazing Height. From a Country where no Mines are found, where Commerce has from many Cauſes, which there is no Occaſion to inveſtigate here, declined, Wealth has been poured into the Mother Country in Quantities exceeding all Calculation. How can theſe Facts be reconciled with the notorious Breaches of publick Truſt, and the enormous Inſtances of Peculation and Miſmanagement, which the Company's Servants have been accuſed of? They are and muſt be incompatible.

27. In the firſt Eſtabliſhment of a new Dominion in a foreign Country, every Degree of Care, Circumſpection, and political Prudence, is requiſite to give it Strength. Some Errors will be committed, nor can they in the Nature of Things be avoided; but if theſe Errors ſhould be of the firſt Magnitude, or frequently repeated, Deſtruction will unavoidably follow them. We will venture to affirm, that if one Half of the Acts of Mal-adminiſtration, which have been

been insinuated or asserted, had been true in fact, the Company, long before this Period, instead of enjoying such unbounded Affluence and Authority, must have been reduced to the last Stage of Bankruptcy and Ruin.

28. To suppose that Men of honourable Families and liberal Educations (as those of this Community in general now are) shall quit their Friends, their Country, and their Prospects; shall engage in a voluntary Banishment of 15 or 20 Years, to a Climate from whence One in Twenty does not return; shall be placed in Situations of the highest Trust; and while performing Services of the greatest Importance to their Country, and to their Employers, shall not have the Means of a comfortable Subsistence, nor the only flattering Hope that can support them, of returning after an Age of painful Service, and with broken Constitutions, are Conditions too hard for human Nature to bear. The Benefits obtained should be in proportion to the Sacrifice made; illiberal Minds alone can envy the dear-earned Gainings of a Life exhausted in such dangerous Toils and Fatigues.

29. * We now come to the last and heaviest Charge, which has gained such universal Credit in *England*, " —That the dreadful " Calamity of Famine, with which

* *Diw*; Anonymous Pamphlets; Publick Papers.

" it

COMMENT.

"it pleaſed Providence to viſit theſe "Realms, to the Deſtruction of "great Numbers of the Natives, "was occaſioned or encreaſed by "a Monopoly ſet on Foot by the "Company's Servants."

30. If a Set of Men could have diſcarded their Principles of Humanity, and have been ſo completely wicked and degenerate as to form a Deſign of ſtarving the People for their own Benefit, we will venture to pronounce, that it was phyſically impoſſible to carry it into Practice in *Bengal*; for the Food of the Inhabitants here is Rice, and other Grain, which ſpring up in all Parts of the Country in Quantities far exceeding what is required for their Subſiſtence, and an annual Exportation takes place. A partial Monopoly, ſo as to produce a Famine in a particular Part, might, by Means of Violence, have been effected; but no artificial Means could have cauſed a general Famine, except deſtroying the Grain, which was never attributed to the *Engliſh*.

31. *Mahomed Reza Cawn* was ſaid to be the grand Inſtrument for carrying into Execution this Plan. It is well known that Care was taken to propagate this Opinion, and that the Court of Directors firmly believing it, were induced to order a moſt particular Enquiry into this Tranſaction to be ſet on Foot.

32. The Mode in which this Enquiry was begun and conducted is notorious.

COMMENT.

notorious. The Accuſed, in return for important and faithful Services, was violently ſeized; and the more effectually to expoſe to the World the total Loſs of his Influence and Authority, was conveyed to *Calcutta* under a military Guard, and there confined for ſeveral Months. Mr. *Haſtings*, who was newly arrived, from a Zeal to ſhew himſelf worthy of the Truſt repoſed in him by a rigorous Obedience to the Orders he had received, and ſtrongly impreſſed, perhaps, that the Accuſations laid againſt *Mahomed Reza Cawn* were founded in Truth and Fact, begun the Examination into his Conduct with Eagerneſs, and proſecuted it with unremitting Ardour. *Nundecomar*, who merited Death for fifty Cauſes more than for the Fact upon which he ſuffered, was then alive, and uſed every poſſible Endeavour to ſubſtantiate the Charge; yet *Mahomed Reza Cawn* was acquitted, nor did a ſingle Suſpicion of the Fact imputed to him remain.

33. As a further Atteſtation of his Innocence, a Paper was ſigned by ſome Hundreds of the firſt People in *Bengal*, declaring their firm Belief that the Accuſation was falſe. He received this united Teſtimony in his Favour at a Time when he was without Friends, without Money, without Influence, and without Hopes.

34. A foreign Author of a neighbouring Nation, whoſe Writings have

COMMENT.

have shewn him to be a Citizen of the World, a Philosopher, and, what is more reputable, a Friend to Mankind, whose Principles are contrary to every Idea of Oppression, has exposed the Malice of this Assertion, and refuted it. To the Evidence of a Man of such enlightened Abilities as the *Abbé Renal*, who cannot be supposed to have been biassed, some Weight must be allowed, since it may be inferred to have been founded on the Information of his own Countrymen, many of whom, Eye-witnesses of the melancholy Scene, and acquainted with the Causes of it, he had Opportunities of consulting. That a Council of State should deliberately lay down a Plan for starving of the People, in order to enrich themselves; and with a Degree of Inhumanity, Proof against every Cry of Misery and Distress, carry such a Plan into Execution, he reprobates as an Idea beyond Measure cruel and absurd.

35. The true Cause of this Calamity, and the only one which could produce it, was a Failure in the periodical Rains during the Years 1768 and 1769. On this Account, the Lands were either incapable of Tillage, or the Crops entirely burnt up. In all Countries where Rice is the Food of the People, and where Fertility depends upon periodical Rains, such fatal Calamities are occasionally experi-

enced. In *China* it has frequently happened; and when the *Nile* in *Egypt*, from any Cauſe, has failed to riſe to its uſual Height, a general Famine there has been the Conſequence.

36. If, before we had been condemned upon Report merely, Enquiry had been made into the Circumſtances relating to the Famine, it would have been found that the *Engliſh* exerted their utmoſt Efforts to moderate its Severity. All the Troops, and immediate Officers of the Company from amongſt the Natives, were preſerved at publick Expence; without which, a Mutiny, Anarchy, and perhaps a general Maſſacre, would have followed. Wherever *Engliſhmen* reſided, Thouſands of the unhappy Natives were fed and kept alive at their Expence, and the nobleſt Acts of private Generoſity and Munificence were performed without Oſtentation, by which great Numbers were preſerved.

37. The Sentiments of the *Abbé Renal* will, we truſt, be adopted in future; and after this Refutation of one Report ſo circumſtantially alledged, and univerſally believed, Aſperſions caſt upon the Community be admitted with more Caution and Reſerve.

38. We have now gone through the different Articles of Accuſation ſtated againſt the *Britiſh* Inhabitants of *Bengal*. In Anſwer to

general

general Inſinuations, we have oppoſed our own Aſſertions, drawn from an accurate State of Facts, and Arguments founded in Reaſon. If Proofs had been adduced by our Accuſers, we ſhould either have brought others of ſuperior Weight, or have pleaded guilty to the Charge.

39. With reſpect to ourſelves, the Accuſations extend to few, if any, of us, and it may on this Account ſeem foreign to the Cauſe in Queſtion to recall the Memory of Facts, ſome of which are grown almoſt obſolete. But we have Reaſon to lament, that the Advocates for Truth are timid and ſupine, whilſt Falſehood and Calumny have active Partizans; and if we had not gone through the irkſome Taſk of ſtating theſe Charges, and refuting them, our Enemies would perhaps have recalled them into Light, and have urged them as recent Objections, which few Perſons could contradict, becauſe there are but few who remember and underſtand them.

40. It has been alſo the more neceſſary upon this Occaſion, becauſe we have Reaſon to expect that the Judges of the Supreme Court will be hoſtile to us in every Step of our Proceedings; and with this Inclination will ranſack old Records for Caſes where the *Engliſh* have committed any Error, Fault, or Crime. But, armed as

COMMENT.

they are with retroſpective Authority to promote ſuch an Inclination, we truſt that a Failure on their Parts to produce new Proofs of old Allegations, or new Accuſations with Proof, will be conſidered as an Evidence that the Crimes, we have been ſaid to have been guilty of, never did exiſt.

41. Our Information alſo leads us to ſuſpect, that theſe very Perſons, who have ſince come to *Bengal* inveſted with ſuch extraordinary Powers, either by themſelves, their Friends, or their Agents, were not remiſs in fomenting the Prejudices which had been conceived againſt the *Britiſh* Inhabitants of *Bengal*: We know alſo, that to ſecure to themſelves the Powers they now poſſeſs, nothing can contribute more effectually than to keep up the Prejudices already conceived. But we truſt, the Wiſdom of the Legiſlature, now better informed, will weigh with Candour before they determine, and decide upon Facts, not upon vague Inſinuations and unſupported Rumours; and that the unuſual Coercions impoſed upon us will be totally removed, or modelled into a more moderate Syſtem, better adapted to our Situation and Circumſtances.

42. HAVING diſcuſſed this Subject in the moſt ample Manner, we proceed to the next Paragraph in

their unspeakable Sorrow, that their dutiful Submission appears only to have encouraged the Justices of the Supreme Court to proceed, Step by Step, in reducing them to the most grievous Distress, while your Petitioners have in Fact been put out of the Law by a Declaration from the Bench on a solemn Occasion, that the Act of Parliament above recited, was not intended for the Security and Protection of the Whole, but for the immediate Protection of a Part of the Inhabitants of these Provinces.

4. THAT your Petitioners humbly conceive, that the Trial by Jury, in all Cases where it can be granted, is one of these inherent, unalienable, and indefeasible Rights of which neither Time nor Circumstances can deprive a British Subject living under British Laws. Yet the Justices of the Supreme Court of Judicature in Bengal have, by the actual or assumed Powers of a Charter granted under an Act of Parliament, refused to allow your Petitioners the Benefit of that sacred Bulwark of their Freedom, except in criminal Cases, wherein by, as your Petitioners apprehend, acting in direct Contradiction to the late Act of Parliament, and the fundamental Laws of the Land, and the great Charter of British Liberties. This Grievance, so unsupportable, must come home to the Breast of every Englishman; and none

in the Petition, which expresses our Uneasiness at the Disappointment of the Expectations we had entertained of Relief, the Distress we are reduced to, and states a Declaration from the Bench which almost precludes even Hope.

43. We are informed, that the Supreme Council of this Country have, at different Times and Occasions, made the strongest and most pointed Representations against the Powers of the Court, and that the Court of Directors have seconded their Representations by a formal Application to Lord *Weymouth*, one of His Majesty's Ministers; yet we have not heard that any Attention has been paid to them. We have hundreds of our Fellow-Subjects, even without these Remonstrances, forms Abstraction to the System of Judicature for this Country would have taken Place, and their Expectations rose on finding were Words seconded by the Testimony of Persons who could not be confounded as partial or disaffected upon the Subject of the expected Relief, a Declaration is made use of (first in this Nation, and in such Terms) as to alarm all our Fears and Apprehensions. Is it possible that the same Hands of Power herein could introduce a Bill into the House of Parliament, in order as to being passed into a Law, the Object of which was partial, confining its Benefits to one Part of the Community,

PETITION.

ness will feel it more sensibly than the enlightened Members of a British Senate.

COMMENT.

munity, and laying a Load upon the other? Is it possible the Legislature could be seduced to give their Consent to a Bill of this Kind? Yet the Declaration answers both these Questions in the Affirmative; and the Judges, if they mean to act consistently with themselves, must go by this partial Rule. It furnishes also an additional Proof, if any were required, of the Prejudices prevailing against us; and our Opinion implies that the Judges have been influenced by them.

44. THE solemn Occasion referred to was, when a Plea for a Trial by Jury was argued in the Court by Mr. *James Creassy*. We do not enter into the Merits of his Cause; his own Affidavit will sufficiently explain it.* — Mr. *Creassy* is himself a plain unlettered Man; and after having in vain solicited the Advocates of the Court to give him their Assistance, he appeared before the Judges himself, demanding in modest, but firm Terms, what he conceived to be, by his Birth-right and by Law, his indubitable and unalienable Privilege. This Plea was overruled, and his Demand unadmitted. It was upon the same Occasion that the Chief Justice, in explaining the *Bill of Rights*, and *Magna Charta*, affirmed them to have *a local* Influence,

* Mr. Creassy is now in England, and his Testimony will be offered at the Bar of the House of Commons.

ence, that *the Benefits of them were confined to* England, *and that thoſe who were ſo fond of them ſhould have remained there.* He told Mr. *Creaſſy* at the ſame Time, that *he was running his Head againſt a Wall, and would daſh his Brains out*; upon which, an Obſervation was made by another of the Judges, which we deem too illiberal to report.

45. Declarations from the Bench, equally intemperate, have been made on many other Occaſions. On a very late one, when a Writ of Subpœna was iſſued to procure the Attendance of a Gentleman of this Settlement as an Evidence, though the Writ had not then been ſerved, the Chief Juſtice expatiated on the compulſatory Power given by the Charter to cauſe the Appearance of Witneſſes, obſerving, as he has done frequently before in other Inſtances, that he ſuggeſted that Clauſe by which ſuch Power was delegated, and explained the Words *Corporal Puniſhment*, contained in it, to ſignify *Whipping and the Pillory*.

46. A Declaration from a Judge upon the Bench, that *he ſuggeſted* a Clauſe in the Charter, importing him to *whip, and pillory the moſt behaviour* of the Subjects, under the Circumſtances ſet forth, affords, as we conceive, Proof of arbitrary, tyrannical Principles, and is a public Inſult to the Community in

whoſe

whoſe Face it was ſpoken. Miſerable indeed muſt be the Situation of *Britons*, to be under the Weight of ſuch Powers, with ſuch an Interpreter!

47. After ſuch Declarations, we ſurely cannot be cenſured for ſaying, that all our Confidence in the Judges is deſtroyed, and that they amply juſtify that Expreſſion of the Petitioners, That they are reduced to the moſt grievous Diſtreſs. If it ſhould be ſaid that theſe Expreſſions are warm, ſome Allowance muſt be made for the Injury done to the Feelings by ſuch Provocations. The ableſt Law Writers acknowledge, that there are certain Points of Oppreſſion that juſtify an Endeavour on the Part of the Sufferers to ſhake them off. Human Nature cannot bear beyond a certain Degree. Our Loyalty to our Sovereign is ſteady and unſhaken, and it ſhall be our Boaſt to preſerve it without any Impeachment.

48. * We have already ſtated, that the Demand of a Trial by Jury,

* An Obſervation [illegible] peruſe the Petition to the Judges and that to [illegible] by Practice and Uſage in *England* excuſed ſerving [illegible] in the former, and demand this Right in common with [illegible] Act of Parliament ſhould therefore take place, [illegible] Degree of Preciſion, in what Manner the Military [illegible] unleſs ſuch a Line of Preciſion is drawn, they may be [illegible] ſo their own as well as to the great Detriment [illegible] and eaſy Rules which occur to us as neceſſary, are

That the Town Clerk, upon Application from the Sheriff, tranſmit to him a Liſt of [illegible] Inconvenience to the publick Service, ſerve as Jurors.

That the Sheriff make this Law his Rule in iſſuing Summonſes to the Military.

And

COMMENT.

Jury, in all Cases where admitted by Law in *England*, has been refuſed. The Grounds upon which we made the Claim are very ſufficiently ſet forth in the Petition to the Judges; and an Attention to the Declaration from the Bench will ſhew, that other Motives equally ſtrong were not wanting to induce us to wiſh and claim the Immunity of this ſacred Palladium of our Liberty and Property.

49. Unwilling to tranſmit premature Complaints to a higher Tribunal, that they had been denied a Privilege for which their Anceſtors had ſtruggled and fought ſo often and ſo hard, the Inhabitants of *Calcutta* preferred their Demand, in the firſt Inſtance, to the Judges of the Supreme Court. The Mode of preſenting the Petition conveyed every ſtudied Mark of Attention and Politeneſs to the Judges perſonally, and of Reſpect to them as a Court formed by His Majeſty's Charter; yet we are ſorry to ſay, that the Petition itſelf, and thoſe who preſented it, were treated by the Chief Juſtice with a Levity unbecoming the Dignity of the high Station he poſſeſſed. Our Remarks on the Anſwer returned by the Judges will compoze what-

And that no Military Perſon, quartered beyond the Bounds of the *Mahratta* Ditch (the ancient and well underſtood Limits of the Town) be liable to be fummoned.

The Ranks of the Military, who are to attend on this Service, ſhould alſo be ſpecified. We are of Opinion, none but Commiſſioned Officers ſhould be ſummoned.

D ever

PETITION.

6. *YOUR Petitioners humbly conceive, that in all subject States, but more especially in one so remote from the Seat of Empire, when the Disproportion between the governing Power and the governed is so great, as to make the present Safety and future Permanency of the Dominion itself depend entirely on the precarious Tie of ideal Superiority, that all possible Tenderness and Caution should be used to prevent that Opinion being weakened or destroyed, or the Authority and Reputation of the Government lessened, lest the Multitude should be encouraged to put themselves on a Level with their Rulers, and lose that Idea of their superior Power by which alone they are held in Subjection.*

7. *BUT, to the great Mortification and Alarm of your Petitioners, they see the Respect and Veneration which the Natives have hitherto manifested for the Government daily decreasing, owing, as your Petitioners verily believe, to the Extension of the Authority of the Court, sitting independent of the Government, to Persons and Cases where they conceive it never was the Intention of the Legislature to allow them to act; a Spirit of Contempt for its Authority, and for* Europeans *in general, heretofore unknown, diffusing itself among*

COMMENT.

ever we have to say upon this Subject.

50. THE Petition, in the following Paragraphs, states the Situation of the Government in this Country; that the Veneration and Respect hitherto manifested for it by the Natives are daily decreasing, and a Spirit of Contempt for its Authority, and for *Europeans* in general, diffusing itself throughout. The Cause and the Consequences are both assigned.

51. It may be here imputed to us, that we have entered upon a Subject which does not properly lie within our Province to discuss; and that, instead of enumerating Matters of Grievance, we have undertaken to compose a Treatise of Politics.—But, in answer to this Imputation, we need only observe, that the Facts are within the Sphere of our own Observation, and the Consequences which we apprehend may result from them, are to the last Degree important to ourselves personally, as well as to the Nation at large.

52. If a Reference were made to the Representations forwarded to *England* by the Members of the Supreme Council, a very clear Idea might be formed of the Embarrassments under which they have laboured, and of the Dangers and Difficulties to which their Delegates are exposed, from the Interference

PETITION.

among the Natives, which, if not restrained in due Time, must terminate in Disaffection and Resistance, and ultimately occasion the Destruction of the British *Subjects residing in these Provinces, and the Loss of these valuable Dominions to the Crown of* Great Britain *for ever.*

8. *THAT your Petitioners, entertaining the most perfect Conviction of the Truth of these Observations, suggested by the Resistance shewn to the Authority of Government in various Parts of these Provinces, and by the late daring Tumult, heretofore unprecedented, which happened in open Day in the Capital, and at the Entrance of the Seat of Judicature itself, offer them, with Submission, to your most serious Consideration.*

COMMENT.

ference of the Jurisdiction of the Supreme Court with their Authority. Numberless Instances are there pointed out in the clearest and most explicit Manner, and the Consequences summed up with equal Force of Argument and Precision. Influenced by no Motives but their Duty to their Constituents and the Publick, their Arguments must be allowed to have considerable Weight.

53. A very small Portion of local Experience is sufficient to shew, that whenever the judicial and authoritative Parts of Government clash, the former must gain Strength, and the latter lose it in Proportion. The Natives of this Country are more perhaps influenced by Appearances than the Vulgar of any other Nation. The Judges of the Court have extended their Jurisdiction to People of all Ranks, and in all Parts of the Provinces; to many whom we conceive to be no wise amenable to it, except by some Quibble or Fiction of the Law, as the Records of their Judgements will particularly shew.

54. A Warrant or other Writ is issued, and the Parties whose Names are contained in it are brought down to *Calcutta*, without Regard to the Distance of their Situation, or the Employments they are engaged in. If they apply to the Officer of Government, whether Native or *European*, whose

COMMENT.

Authority they had before conſidered as the Object of their Obedience, to relieve them from the Dangers or Diſtreſs of this Situation, they are told that the Orders of the Court muſt be obeyed.

55. Under theſe Circumſtances, what Concluſion can they draw, but that the ſupreme Authority of the State is veſted in the Judges, who act really, and to Appearance, without being ſubject to any Controul whatſoever.

56. A Native, who has thus ſuffered by the Power of the Court, endeavours, in Return, to take his Advantages of it; he becomes a Complainant, and ſeizes the firſt Opportunity of deriving ſome Benefit from the Immunity held out by the Court. Thus Contempt for the Authority of the real Government, and its miniſterial Officers, is multiplied and extended.

57. The very Term of Government has been treated with Ridicule in open Court. It has there been aſked, Who is the Government, and the Members who compoſe it? Notwithſtanding they were appointed by Act of Parliament, they have been called, in a Stile of Ridicule and Levity, The Agents of the Company. Many of the Natives, by whom the Court is crouded, ſufficiently underſtand the *Engliſh* Language to comprehend the Meaning and Force of ſuch Expreſſions; and we leave the World to judge what

what must be the Effect of them amongſt the Natives, when circulated as Articles of News by thoſe who heard them, or with a blacker and more wicked Deſign by the Retainers of the Court.

58. One very important Department of the Government of this Country, is the Adminiſtration of Juſtice in civil Cauſes to the Natives. This Department was under the Charge of the Company's Servants, to whom the Superintendance of the Country provincial Courts was intruſted.

59. It is here foreign to our Argument to diſcuſs the Queſtion, Whether they diſcharged their Duty with Honeſty, Fidelity, and to the Satisfaction of the Natives, or not. Taught by Experience that the Authority under which they act is either denied or incapable of Proof; that they are now, or may at any Time hereafter, be liable to Proſecution, and its ruinous Conſequences to them as Individuals, for Acts done by them in their judicial Capacities; that the Fairneſs and Juſtice of their Proceedings gives them no Warrant of Immunity againſt Proſecution; and that they are liable to be condemned to to pay heavy Damages, equal perhaps to a Sentence of perpetual Impriſonment, for what may be called irregular and informal in an *Engliſh* Court of Law, though conformable to their Inſtructions, and the

the Cuſtoms of the Country: The Superintendants, under theſe alarming Circumſtances, have either given up the Performance of their Duty entirely, or execute it in a Manner ſo circumſcribed and limited, as to be of little Uſe or Benefit to the Community.

60. Facts of this Kind are too glaring not to ſtrike the Obſervation of the Natives, whoſe Capacities are ſufficiently extenſive and informed to deduce the true Concluſions from them. When they find the Courts of Juſtice, to which they uſed to apply for Relief, no longer in a Situation to grant it, they will immediately diſcern the true Cauſe; they will ſee the Government without Vigour, and a Tendency towards Anarchy and Confuſion will inſtantly prevail.

61. If we turn to the Collection of the Revenues, we ſhall ſtill ſee the ſame Confuſion flowing from the ſame Source. This, which in other Countries is one of the ſimpleſt and eaſieſt Operations of Government, is in *Bengal* difficult and complicated: The Detail is ſo great, and Meaſures muſt follow each other ſo quickly, that a certain Degree of Irregularity is unavoidable. It cannot be effected without much Management, nor this Detail carried on without ſummary Acts of Authority; and ſuch has been the Syſtem, adapted to the Manners and Practices of the Natives,

COMMENT.

tives, long before the Revenues of *Bengal* came into the Management of the *Engliſh:* yet, in the Proſecution of this Buſineſs, the Collector acts with Fear and Trembling, his Hands are arreſted by a Suit in the Court of Judicature, and at a Time when a vigorous Diſpatch is indiſpenſibly requiſite, ſlow Cautions and dilatory Meaſures are employed, leſt the Court ſhould interfere... In this Department, ſo highly material and important, which the Wiſdom of the Legiſlature thought proper to leave where it ever had been, and to be carried on by the cuſtomary eſtabliſhed Modes of Proceeding, the Court have the leaſt Pretence to interfere. What will the Natives ſuppoſe, when they ſee the Vigour ſo requiſite to be uſed in this Buſineſs relaxed? They will conceive the Authority of the Government ſubverted; and either pay their Rents after a thouſand Delays and Evaſions, or withhold them altogether.

62. Even in the Execution of the criminal Juriſdiction of this Country, which is wholly and excluſively, out of *Calcutta*, veſted in the Natives themſelves, and by them carried on under the Authority, and in the Name of the Nabob, the Court have interfered. The Power and Name of the Nabob, who, as the Head of ſo great and extenſive a Department, deſerved Attention and Reſpect, have

COMMENT.

have been treated with Ridicule in the open Court; he has been called *a Phantom*, and *a Man of Straw*; his Officers are of courſe intimidated, and want the Courage to act.

63. The Government, in ſhort, in all its Branches, is affected, and the Veneration and Reſpect hitherto paid to its Authority diminiſhed. The Conſequences, without ſome timely and ſalutary Interpoſition from *Europe*, muſt be what the Petition ſtates, *the Loſs of theſe Dominions to the Crown of* Great Britain *for ever*.

64. That theſe Effects have already in ſome Meaſure taken Place, the Reſiſtance which has been ſhewn to the Authority of Government is a Proof. Within theſe few Months, three or four Inſtances of this, accompanied with the utmoſt Diſorders and moſt violent Breaches of the Peace, have occurred within a very few Miles of *Calcutta*.—An armed Force, after the Civil Powers of Government had been repeatedly diſregarded, was ſent to apprehend a petty Zemindar at a very ſmall Diſtance, whoſe refractory Behaviour proceeded moſt abſolutely from Contempt, as he had no poſſible Means of Reſiſtance.

65. The daring Tumult which the Petition ſtates, happened in the following Manner: The *Mahometans* have an annual Feſtival in Com-

COMMENT.

Commemoration of two of their Saints, *Hoſſein* and *Hauſſeen*, who are ſuppoſed to have ſuffered Martyrdom, in which they carry the Shrines of their Martyrs in Proceſſion.—The Proceſſion advanced towards the Court-houſe at a Time when the Judges were ſitting. Offended at, and perhaps interrupted by the Noiſe, which would ſoon have ceaſed, as the Proceſſion advanced an Order was given to the Sheriff to interrupt it.—The Manner in which this Order was executed gave Offence: A Tumult inſtantly began. Luckily for the Judges, and other *Britiſh* Subjects, the Rioters in general wanted offenſive Weapons, and were therefore compelled to vent their Rage with ſuch Inſtruments of Offence as Accident ſupplied. The Court-houſe and other neighbouring Houſes were attacked with a Shower of Bricks; every *European* that paſſed by at the Time was ſtopped, and obliged to quit his Carriage or Palanquin; ſome were beat and wounded; and this Outrage continued for two Hours, till a Military Party was called in, and obliged the Rioters to diſperſe. Had any Reſiſtance inſufficient to quiet them been made, it is probable Numbers would have been murdered.

66. Ignorant and timid as the Generality of the Natives of this Country are, there are ſome amongſt them who are capable of

the ſoundeſt Reflection. The Memory of an Inſult to Objects of religious Veneration will not be ſuffered to die away; and may be revived at a Time when Opportunity is more favourable to Deſign, when aided by ſuperſtitious Prejudices.

67. It is, in ſhort, a Matter of moſt ſerious Conſideration to us, and to every *Britiſh* Inhabitant in this Country, to obſerve the growing Alterations in the Manners and Diſpoſitions of the Natives. Their Habits naturally lead them to pay Deference and Reſpect to their Superiors; amongſt themſelves it is never omitted; and ſo far from being conſidered as any Mark of Servility, though to a *European* it might appear ſuch, theſe Forms are deemed by them eſſential to the Stability of the Government itſelf.

68. As the Progreſs of a Nation towards Civilization is ſlow, the Decline into Anarchy and Confuſion may be rapid. It is unneceſſary to enlarge upon the Poſition that our Dominion in this Country depends upon the Tie of ideal Superiority, and that every Mark of Slight or Contempt ſhewn to an *European*, in a remote Degree affects both the Name and Authority of the Government itſelf. *Europeans*, and the *Engliſh* more than any other Nation perhaps, deſpiſe all Forms and Ceremonies which evince any extraordinary Degree

Degree of Submiſſion or Reſpect; they conſider the Obſervance of them as a Tax upon their Independence, which degrades their perſonal Dignity as Men. Theſe Sentiments are the Growth of a free Conſtitution and enlightened Principles, but cannot be tranſplanted into *Aſia*, without laying a Foundation for the moſt fatal Conſequences.

69. The *Engliſh* who have ſettled in *Bengal* have perhaps been careleſs in giving this Point all the Conſideration it deſerved: The Conſequences are not ſufficiently foreſeen, nor the Progreſs of them attended to. Diſguſted at the Pomp and Parade which Cuſtom has here from Time immemorial eſtabliſhed, they have diſcarded, in a great Meaſure, external Forms and Ceremonies as troubleſome and irkſome, without being either uſeful or important in themſelves; whilſt the Natives, on the other Hand, aſſume upon this Negligence. The Conſequences are approaching, and the Experience of every individual *European* in the Country is in Support of what we have aſſerted, That no Reſpect is paid to Perſons.

70. We are but too apprehenſive, that every Argument adduced to prove the Neceſſity of retaining the Natives within any Limits of Fear and Reſtraint, will be conſtrued into a Deſire to tyrannize over them: But we declare, in the Face of

the whole World, that no Perſon can hold every Idea of Cruelty and Tyranny in greater Deteſtation than we ourſelves do; and we believe that ſuch Principles were reprobated by the ſucceſſive Members of this Government. If, ſituated in a Country in the Proportion of One to Ten thouſand, where a deſpotick Form of Government has ſubſiſted through Ages, where no other Form of Government has ever ſubſiſted at all, we maintain the Neceſſity of preſerving inviolate that Idea of Superiority, by which, as much as by our Arms, this Dominion was acquired, and has been preſerved: If upon this Principle we contend, that the Forms of perſonal Submiſſion and Reſpect to *Europeans* in general ſhould be anxiouſly preſerved; why are we to be held up to Mankind as contending for an arbitrary, tyrannical, and oppreſſive Power? It is not our Object to have any Controul over the Lives or Property of the Natives; we wiſh to leave them uncontrouled in theſe Points, and to grant them all poſſible Security in the Enjoyment of what they conſider as their next deareſt Privileges, their civil, moral, and religious Prejudices. Secure in theſe Points, no Native of *Hindoſtan* will ever evince any Reluctance at being obliged to pay ſuch Marks of Veneration and Deference as Cuſtom has preſcribed.

71. The

PETITION.

9. *YOUR Petitioners have been informed, and believe, That* ex post facto *and retrospective Laws are contrary to natural Justice, incompatible with the Laws of England, and irreconcilable to the Feelings of a British Parliament; and that they are held in Abhorrence by the Nation. That if these Principles are admitted in England, and acknowledged to be productive of the most fatal Consequences, they must apply still more forcibly to a subjected Country situated at the Distance of Half the Globe, where the Manners, Customs, Laws, and Prejudices of the People differ so widely from those of the governing Nation. Your Petitioners appeal to the Humanity of the* British *Parliament to reflect on the innumerable Hardships which must ensue, and the universal Confusion which must be occasioned, as well to personal Rights as to private and publick Property, by giving to the voluminous and intricate Laws of* England *a boundless retrospective Power*

COMMENT.

71. The most enlightened of the Natives, sensible of the Errors we have committed, condemn them without Reserve. Taught by their own Experience, that the Appearance of Authority commands Respect, they never neglect to preserve it; and their Example gives an additional Sanction to the Truth of their Precepts and our Remarks.

72. THE Observations upon the two preceding Paragraphs in the Petition have been voluminous, but what follows will, we are afraid, take up a still longer Discussion. The Subject is the Introduction of the *English* Laws into *Asia*, and the Consequences, both to *Europeans* and Natives, from their retrospective Tendency. We will, however, curtail it as much as possible, by avoiding any long Dissertation upon that Part of the Subject relating to ourselves.

73. We have every Reason to suppose, that an Attempt will be made to establish in *England* a Belief that the Laws of *Great Britain* may, without much Violence to the Principles of the Natives, be generally put in Force in this Country. We know also, that some Time ago an Attempt was actually made; for the Chief Justice drew up a Bill for an Act of Parliament, which was approved by his Companions, and dispatched

to

PETITION.

Power in the Midst of Aſia, *and by an Application of thoſe Laws, made for the freeſt and moſt enlightened People on Earth, the Principle of whoſe Conſtitution is founded in Virtue and Liberty, to Tranſactions with the Natives of* India, *who have from Time immemorial lived under a deſpotick Government, eſtabliſhed on Fear and Reſtraint. And your Petitioners moſt earneſtly call upon you to conſider, what muſt be the Fears, what muſt be the Terrors of Individuals, to find their Titles to Property, their Tranſactions and Engagements with Natives, previous to the Eſtabliſhment of the Court of Judicature, tried by the Standard of* Engliſh *Law, and by Men educated under its Forms, and unavoidably imbibing its Prejudices; when no ſuch Laws could be known to, or practiſed by, Natives or* Europeans *then reſiding in the Country; and at a Time too when few or no Perſons of legal Knowledge were in the Country to aſſiſt or adviſe them.*

COMMENT.

to *Europe* through the Channel of the General Council.

74. We know that, under the plauſible Pretence of communicating to the Natives the ineſtimable Benefits of the *Engliſh* Conſtitution, and of diffuſing equal and impartial Juſtice throughout this Country, this Bill contained an inſidious Deſign of comprehending all the Inhabitants of theſe Kingdoms within the Juriſdiction of the Court: That for this Purpoſe inferior Courts were propoſed to be eſtabliſhed in every Diſtrict with native Officers, under the formal Denomination of Judges, from which there was to be a regular Chain of Aſcents and Appeal to the Tribunal in the dernier Reſort, the Supreme Court of Judicature in *Calcutta*.

75. Happily for ourſelves, and happily for the Natives, this Bill has been ſuffered to periſh in Oblivion. But we think it our particular Duty, by a State of Facts and Obſervations drawn from Hiſtory and Experience, to evince the Impoſſibility of introducing the Laws of *Great Britain* into *Hindoſtan*, and to point out the Conſequences which muſt ſooner or later inevitably follow the Attempt.

76. In diſcuſſing this Subject, we diſtruſt our own Abilities; the Attempt however cannot be deemed uſeleſs or unimportant.

77. In tracing the Aſſertions of all Writers, from the remoteſt Antiquity

tiquity to the preſent Time, we find the ſame Cuſtoms, Uſages, Religion, and Superſtition, to have ever prevailed in *Hindoſtan*: a ſingular Fact, demanding the moſt ſerious Reflection, as it furniſhes a poſitive Proof that the ſeveral Conquerors, who have ſubdued theſe Realms, have never violated the Privileges of the People; for, after a Form of Government has been eſtabliſhed for any Period of Time, the Manners of the People become aſſimilated to it.

78. The *Mahomedans* obtained Dominion in *Hindoſtan* before the Monarchs of the *Mogul* Line. What Laws and Ordinances they impoſed upon the People are now imperfectly known, and it is needleſs to trace them; none, we are aſſured, that militated againſt the Prejudices of the People in *Bengal*. The Empire of the *Moguls* in *Bengal* cannot be conſidered to have been founded before *Akbar*, though his Grandfather *Baber* preceded him as a Conqueror.

79. The Inſtitutions of a King ſo renowned for political Wiſdom cannot be conſidered with too much Attention. Upon an Examination of them, we find him ſtudiouſly providing for all Ranks and Orders of the State, conciliating by every Means the principal *Hindoo* Natives, and avoiding with Anxiety whatever might be deemed an Infringement of the moral, civil, or religious

religious Prejudices of the Subjects he had acquired. Theſe Regulations ſtill exiſt: In one of them, we find him recommending Toleration in the ſtrongeſt Terms, and by the moſt ſolid Arguments reprobating a blind undiſcerning Zeal for Religion; an Example worthy of Imitation, and the more ſtriking, as the Monarch, who gave it to the World, profeſſed a Religion the leaſt mild and tolerating of any to thoſe of a different Perſuaſion, and the moſt adverſe to every Species of Idolatry which his *Hindoo* Subjects practiſed.

80. Inſtead of introducing a voluminous Code of Juriſprudence, his Ordinances were few and ſimple, eaſy to be underſtood, and eaſy to be followed. One leading Principle appears throughout the Whole of his Conduct, "*to conciliate the Na-*"*tives to his Government.*" Though the Diſparity of Numbers between his own Followers and his new Subjects was not ſo great as between the late Conquerors of *Hindoſtan* and the Natives, yet he ſaw the Neceſſity of gaining their Minds, and was too enlightened to be ignorant that the Security of his Dominions depended equally upon Policy and Force. External Forms and Ceremonies, which impoſe ſo much upon the Vulgar of all Nations, and eſpecially in the Eaſt, where the Vulgar are more influenced by Objects which ſtrike their

Eyes,

Eyes, than by Appeals to their Underſtanding, he knew well the Neceſſity of obſerving: theſe enſured Reſpect and Veneration for the Sovereign and his Government, for his inferior Officers and Miniſters.

81. As no Empire can ſubſiſt without a criminal Juriſdiction, the *Moguls* reſerved this Power principally to themſelves: Courts of Juſtice for the Puniſhment of Delinquents were eſtabliſhed at the Capital, and other ſubordinate Courts in the various Provinces of the Empire. The Moderation recommended by *Akbar* in the Infliction of Puniſhments, ſhews the Clemency of his Character; but even theſe Courts cannot be deemed, nor ever were conſidered by the Natives as contradictory to their Sentiments on criminal Juriſdiction. By the *Mahomedan* Laws, few Crimes are puniſhed with Death. The Law of Retaliation, the moſt ancient, moſt ſimple, and moſt univerſal of any poſitive Law, was the Principle upon which criminal Juſtice was diſtributed. In ſuch a Code the Statutes are few, and eaſily underſtood by a People who have never accuſtomed themſelves to refined Speculations.

82. Even in this Part of the Government, the native *Hindoos* were not excluded from all Juriſdiction. By the Conſtitutions of the Empire, the Zemindars were appointed Conſervators of the Peace within their own Diſtricts: They

pledged themſelves to protect the Property and Lives of their Subjects, and to apprehend all Offenders, and after having ſecured them, deliver them up to the *Mahomedan* Courts of Juſtice. When the Crimes were of ſuch a Nature as to call for a Puniſhment affecting Life or Limb, many of the Rajahs, tributary to the Empire, were permitted to diſpenſe both civil and criminal Juſtice within their own Provinces.

83. In the civil Adminiſtration, the *Hindoos* were admitted to a larger Share of Authority: As by them the Lands were cultivated, ſo by them the Collections of the Rents were made and managed, and to them the executive Powers in this Department were almoſt excluſively intruſted.

84. The firſt Financier who ſettled the Rates and Rules of Taxation in this Country was a *Hindoo*; and in ſome of the Departments eſtabliſhed by him, a Succeſſion of *Hindoo* Officers has prevailed to this Day. People were even appointed to regiſter and record the Cuſtoms and Uſages reſpecting the Lands and Rents, that no Infraction of them might be incauticuſly introduced.

85. * Such was the Conduct of *Akbar*, and ſuch the Policy of the ableſt and wiſeſt of his Succeſſors. It

* See the 3d Vol. of *Dow's* Hiſtory of *Hindoſtan*

COMMENT.

It would have been eaſy to have ſwelled the Subject to a Volume; but enough has been ſaid to ſhew, by way of Example, the Manner in which the *Mahomedan* Government was firſt eſtabliſhed, and by what Means it was made permanent, till overturned by ourſelves.

86. Our Situation, as Conquerors, differs from that of the *Mogul* Monarchs. Both the *Hindoos* and *Muſſulmen*, conſolidated by Time into one Body, muſt be the Objects of our political Reflections. In ſome Reſpects their Rights, their Manners, and their Cuſtoms, are common, wherever they are derived from the Climate, or from the Form of Government; but where Religion is the Source from which they flow, a Diſtinction of courſe prevails.

87. The moſt ſtriking general Characteriſtick of the Natives of this Country, is an invincible Attachment to their Uſages and Cuſtoms; it has continued through Ages. The Lawgiver of the *Hindoos*, at what Time ſoever he may have appeared, eſtabliſhed this Principle in the Minds of his Followers; all his moral and religious Precepts have a Tendency to preſerve it. We ſhall find, upon Enquiry, the ſame Principle, from the ſame Cauſe, operating forcibly amongſt the *Mahomedans*, though not ſo ſtrong as amongſt the *Hindoos*. Every Traveller, every Hiſtorian,

has noticed this characteriſtical Attachment, and the Folly and Danger of an Attempt to break through it.

88. The Sentiments of the moſt * enlightened Legiſlators are equally ſtrong with reſpect to the Principle in general. Forms, Cuſtoms, or Laws, confirmed by the Practice and Uſage of Ages, whether uſeful or abſurd, muſt ſtill be permitted to ſubſiſt, and ſhould, in ſome Degree, be adopted by the governing Power.

89. The *Hindoos* we imagine to make up Eight Tenths of the Population of this Country; the *Mahomedans*, *Portugueſe*, *Armenians*, *Engliſh*, and Foreigners of all Denominations, the Remainder.

90. If the Laws of *Great Britain*, and thoſe of *Hindoſtan*, were deducible from the ſame Principle; if the Cuſtoms and Manners of *European* Nations had any Reſemblance to thoſe of the Natives of theſe Realms, our Code of Laws might be eſtabliſhed at once; but it is univerſally known that they are diametrically oppoſite to each other, and that they are totally incompatible, and that no Time or Management can make them coaleſce. A concealed or ſuſpected Attempt to introduce the *Engliſh* Laws has created an Alarm; but an open and avowed Deſign would be deemed a daring Act to ſubvert the

* *Monteſquieu* in particular.

the civil and religious Sentiments of the Natives, and probably be inſtantly followed by a Revolution fatal to the *Engliſh* Name and Government.

91. * A Gentleman, who reſided many Years in this Country, has ſaved us the Trouble of entering into a long Detail upon this Subject, by giving a whole Chapter to it, entitled, "The Impoſſibility of "introducing *Engliſh* Laws into "*Bengal*; with ſome Obſervations "on the Nature of thoſe Regula-"tions which the Manners and "Habits of the Natives may "admit." The Subject is there diſcuſſed with Wiſdom and ſound Reaſoning; and to the Facts and Obſervations there ſtated, our own Experience bears Teſtimony, except in one Particular, where he ſuppoſes an *Engliſh* Court of Law would want *Influence*. That they have acquired too much, is a melancholy Truth; but it muſt at the ſame Time be acknowledged, that he could not foreſee the extraordinary Cauſes which led to it.

92. If any further Proof were required, we would appeal for it to the Clamours of the Natives againſt the Juriſdiction of the Supreme Court; and we now give it as our deliberate Opinion, that the Court and its Powers are held in general Deteſtation.

* Mr. *Verelſt.*

93. How

COMMENT.

93. How is it possible for them to be reconciled to such a Jurisdiction? Our Laws, whilst they enforce Subordination to the Magistrate, at the same Time diffuse a Spirit of Equality and Independance; tried by them, all Subjects are reduced to the same Level.—But here another Principle operates, and Subordination to every Superior is established, enjoined, and enforced. To be compelled to give Satisfaction to a Person of the lowest Rank, for an Action which our Laws would denominate a civil Injury, but which a Native, uninstructed by an Attorney, would not suppose any Injury at all, is considered by a *Mussulman* or *Hindoo* of Rank, as an insupportable Grievance, and a Disgrace to his Reputation: To be committed to Gaol upon an Action for Debt, in Default of giving Security double the Amount of the Sum sued for, to them appears tyrannical, cruel, and unjust, as Conviction before Trial is presupposed in the Punishment. To be compelled to have their Causes tried by Rules and Orders, and in a Language, they do not understand; to be prohibited pleading themselves, and to give themselves up to the Guidance of an Attorney, a trifling Mistake on whose Part as to Form, or other Matters equally unknown to them, may reduce them to Beggary: The

Length

COMMENT.

Length of Time required for bringing every Suit to Trial, and the intolerable Expences attending every Suit; are ſome only of the numerous Circumſtances they complain of. It may be ſaid, theſe Inconveniencies are partly acknowledged to exiſt in *England*; but Cuſtom has there rendered them known and familiar, whilſt Cuſtom has eſtabliſhed Forms in this Country diametrically oppoſite to them.

94. Let us however ſuppoſe for a Moment, that an Act of Parliament eſtabliſhing the civil and criminal Code of *Great Britain* in this Country were once paſſed; let us ſuppoſe that it were received without Reſiſtance, and that the Natives repined only and ſubmitted: What may be conceived to be the Reſult? The Natives adopting, in a Courſe of Years, new Sentiments, and new Manners, from the Form of Government, and ſuperadding them to their own, would no longer be the ſame People; a Spirit of Licentiouſneſs would introduce itſelf by Degrees, and, actuated by it, they would probably ſweep away, by one Act of Vengeance, the People who pretended to hold a Dominion over them.

95. Nature and the Climate were the Legiſlators of the People of *Hindoſtan*. In propoſing new Ordinances, they muſt be conſulted; and to impoſe Laws without a

Reference

COMMENT.

Reference to theſe Sources, is attempting to overturn what in itſelf is immutable.

96. We know the unſpeakable Benefits of our ſacred Conſtitution, as *Engliſhmen* we revere it; we know that it was eſtabliſhed after infinite Conteſts, and that it has grown up by the progreſſive Experience of Ages into a Form, the Admiration of ourſelves, and the Envy of Foreigners. With a natural Prejudice we both pity and deſpiſe thoſe People where a leſs liberal Syſtem of Juriſprudence is eſtabliſhed, or where the Will of the Deſpot ſuperſedes all Syſtem. But let it be conſidered, that if Liberty with us is a real, it is alſo an artificial Source of our Happineſs; and that other Nations may enjoy a more perfect Felicity than ourſelves, though denied the Freedom we poſſeſs. Till a Burthen is felt, the Size of it is of no Importance; a Spectator at his Eaſe will conclude the Sufferings of the Bearer muſt be enormous, though he himſelf ſhould be inſenſible of them.

97. This Mode of Reaſoning may be applied to this Country, where the Form of Government from Time immemorial has been deſpotick, or what an *Engliſhman* would term flaviſh and oppreſſive. The Natives do not themſelves entertain any ſuch Idea. Unaccuſtomed to ſpeculate, happy in the

Enjoyment

COMMENT.

Enjoyment of his civil and religious Prejudices, and tenacious of them, the Native of *Hindoſtan* never enquires what Form of Government prevails in other Countries. The Way his Fathers trod, is the one he wiſhes to follow: His Maſter, his Magiſtrate, or his Sovereign, is to him a God upon Earth. Let an *Engliſhman*, whoſe Ideas of Happineſs are founded on the Baſis of Liberty, explain to him the Benefits of his own Conſtitution, and point out to him the Conſequence he, as an Individual, would be to the State, and the Independance he would enjoy by living under it: Submit it to his Option what Form of Government he would prefer; he would reply, "My Maſter, or my Zemindar, is my Lord, my Protector; his Cuſtoms and mine are the ſame; my Language is his; he hears my Complaints, he performs his Ablutions, and adores *Brama*; my Father, my Grandfather, ſerved him, ſo will I." Probably he might add, "I know nothing of the Liberty you talk of, I do not underſtand it. You tell me I am a Slave; it may be ſo: without knowing it I cultivate my Land, the Produce maintains my Family; I have ſeveral Wives and Children, with whom I am happy; what more can I deſire?"

98. Are we to condemn his Stupidity, or, in Pity to it, attempt,

contrary to his Inclination, to impoſe another Inſtitution upon him which militates againſt all his Prejudices; and, under the Pretence of ſecuring to him what he enjoys, and communicating what he does *not* want, ſubvert his real, ſubſtantial Happineſs? An Inſtitution ſo introduced, we will venture to aſſert, would here be Tyranny in its moſt dreadful Form.

99. To illuſtrate our Reflections on the retroſpective Power given to the Court, and on the Application of the Laws of *England*, in this View, to Tranſactions between *Europeans* and Natives, or between Native and Native, previous to the Eſtabliſhment of the Court, or Promulgation of thoſe Laws, we will make a ſhort Compariſon, which, we believe, will come home to the Feelings and Underſtandings of People in *England*. Suppoſe, for a Moment, that *Great Britain* was conquered by a *Mahomedan* Prince; that, after ſome Years Poſſeſſion, he appointed a *Cawzee*, *Mufti*, and Doctors of the *Mahomedan* Law, to do Juſtice over the whole Realm, according to the Precepts of the *Coran*, and the Principles and Uſages of their Courts; and not only to have Cognizance of what might happen in future, but to correct, reviſe, annul, or ſet aſide, all former Judgements; and to meaſure and decide on all paſt Tranſactions, by the ſame Standard of the *Muſ-*

COMMENT.

ſulman Law, and by the Ideas of Men educated under its Principles, and imbibing all its Prejudices: Suppoſe ſuch a Court ſanctified with all the Authority of the governing State, and executing uncontrouled and unlimited Juriſdiction; then let every Man figure to himſelf the innumerable Hardſhips which would ariſe, and the univerſal Confuſion which muſt be occaſioned, as well to perſonal Rights, as to publick and private Property, by the Exerciſe of ſuch a Juriſdiction. Every Man in *England* will ſay to himſelf, "It could not be borne; Death would be preferable to ſuch a Situation:" Yet ſuch is the Situation of many of the Petitioners, and of the Natives univerſally. The Houſe of *Juggut Seat* is now ſued in the Court for a Demand of about 15 *Lacks* Principal, on a *Teep*, or Note of Hand, ſaid to have been executed by his Father, who was murdered by *Coſſim Ally Cawn*, at *Monghyr*, Seventeen Years ago. On this Occaſion, the Statute of Limitations was pleaded, and over-ruled by the Court; and we underſtand it was declared, that if this Statute *was allowed* to have Force here, which the Court had *not yet decided*, it ſhould only take Place from the Time of the Court's Eſtabliſhment here. Actions have been commenced and decided in this Court, the Cauſe of which aroſe in *Seraje ul Dowla*'s Time;

nor is it within our Knowledge to ſay to what Limits this retroſpective Power has been or may be carried; but it is eaſy to foreſee, from its Operation, a total Subverſion of all Property, and Confuſion of all Ranks and Orders amongſt the Natives.

100. With reſpect to ourſelves, it cannot be expected that we ſhould ſit eaſy under retroſpective Juriſdiction, lodged in the Hands of three Men who have denied us a Trial by Jury. What a Scope for the Operation of Enmity or Prejudice! The Mayor's Court, the Removal of whoſe Juriſdiction we have ſo much Reaſon to lament, was a Court of *Equity*. The *Britiſh* Inhabitants, ſenſible of this, were leſs attentive in ſtudying Points of Law. All Deeds of Gift, Contracts, Bargains, Aſſignments, Bills of Sale, *&c.* were drawn up by the Parties themſelves, or by Attornies very little verſed in the Science or Practice of this Profeſſion. Groundleſs Suits, Vexation, and Difficulty, may and do now ariſe from this Cauſe, as few of theſe Deeds are acknowledged formal in a Court of Law. A Blow, the Effect of inſtantaneous Paſſion, and fifty frivolous Cauſes, where the Remembrance of them remains, and Witneſſes can be procured, may become the Foundation of Suits in the Court.

101. Lieutenant-colonel *Henry Watſon*, one of the Petitioners, having

having laid out the Sum of *Eighty thouſand Pounds*, and given up the Labour of many Years to the Erection of Docks, a Work from which the Publick muſt derive the higheſt Benefit, and from which he has not hitherto received the ſmalleſt Advantage, is now deprived, by a Judgement of the Court, of the Ground on which he has erected Part of thoſe Works, though a Part of the Land was originally ceded to the Company by *Meer Jaffier*, and confirmed by *Shah Allum*, and held by him under a Grant of the Council, ſanctified by another from the Court of Directors.

102. The Caſe of Mr. *Thomas Craigie* may be mentioned to ſhew the Hardſhips ſuffered by that Gentleman. He had entered into a Contract with a Native, by Name *Narain Tagoor*, and advanced him Money for the Performance of it, who, failing in his Engagements, Mr. *Craigie* applied to the Adawlut, or Provincial Court of Juſtice at *Patna*, for Redreſs, being the only Power exiſting to which he could then apply, as Natives, beyond the immediate Limits of *Calcutta* and the Factories, were not amenable to the Mayor's Court. After having advanced his Money two or three Years, Mr. *Craigie*, by the Aſſiſtance of the *Patna* Court of Adawlut, recovered the Principal, about 7,000 Rupees. On the Inſtitution of the Supreme Court, *Narain*

Tagoor

COMMENT.

Tagoor ſued Mr. *Craigie*. The Proofs adduced by the latter of the Authority and Deciſion of the *Patna* Adawlut were not admitted; of courſe the Merits of their Proceedings were not a Queſtion before the Court; and Judgement paſſed againſt Mr. *Craigie*, as an Individual, for a Treſpaſs, in the Sum of 11,000 Rupees, with Coſts. That Gentleman, who was before in bad Circumſtances, ſoon after ſickened and died.

103. We cannot avoid mentioning the Caſe of Mr. *Henry Grant*, whoſe Servant, detected in taking out and ſtealing Goods from Cheſts in a Boat under his Charge, filling thoſe Cheſts with Stones, and ſinking the Boat, was condemned by the Zemindar of *Calcutta* to work on the high Roads. Some of the ſtolen Goods were found in another Man's Houſe, who, to prevent a Proſecution, gave Mr. *Grant* a Bond for Part of the Amount loſt; this Man afterwards ſued Mr. *Grant*, and recovered 11,000 Rupees Damages. The moſt extraordinary Part of this Tranſaction is, that the Suit was originally inſtituted in Equity, where Judgement was given in Favour of Mr. *Grant*; but the Judges recommended the Man to ſue him at common Law, when they gave the above Damages againſt Mr. *Grant*, thereby reverſing their own Decree in Equity.

Notwith-

COMMENT.

Notwithstanding that Mr. *Cottrell*'s Case applies more pointedly to a former Part of the Petition, yet, as we are here reciting of Cases in Support of our Petition, we will introduce it. Mr. *Cottrell* was prosecuted by one *Juggoo Mohun*, who follows the Business of a Sircar to certain Gentlemen in the Place. This Man obtained a Judgement of 1,000 Rupees Damages, and Costs of Suit amounting to upwards of 2,000 Rupees more, for laying his walking Cane against the Man's Arm to put him out of the Room, in Return for a personal Insult.

This Case is rendered particularly striking by the following Circumstances; the contradictory Evidence of two Brothers with respect to [illegible] of the supposed [illegible] appearance; by a Bill of Indictment having been preferred against Mr. *Cottrell* for this very Act, which was thrown out by the Grand Jury previous to the [illegible] of which *Juggoo Mohun*, a few Days before Mr. *Cottrell*'s Cause occurred, having brought an Action against Mr. *Bulham Sear*, a Cotton Merchant, and others, for an Assault, in which his own Witnesses proving himself to have been the Assaulter, he was nonsuited with Costs; and, in consequence of the Judgement against Mr. *Cottrell*, *Bulham Sear* brought his Action for the Assault men-

tioned

PETITION.

10. YOUR Petitioners humbly conceive, that no Tyranny can be more dreadful in its Operations, or more fatal in its Conſequences, than that a Court eſtabliſhed by Law, with all the Authority of one of the firſt Courts in England, ſhould alſo poſſeſs undefined Powers and Juriſdiction, of which the Judges of it are the ſole Interpreters, and under no Controul but at the immenſe Diſtance of the Mother Country. Yet ſuch is the Situation of your Petitioners; they are placed within the Reach of this two-edged Weapon, ſurrounded with the Toils and Pitfalls of the Law, in a Country where Perjury is almoſt a Profeſſion, unknowing where they may reſt

COMMENT.

tioned above, and obtained Judgement of one Rupee Damages, and one Rupee Coſts.

It appears odd that the Damages againſt Mr. *Cottrell* were given on the Foundation of *Juggoo Mohun*'s being a Man of Property and Worth, the Meanneſs of his Caſt being wholly excluded from Conſideration; and that the Character, Property, and Reſponſibility of the Cotton Merchant, does not appear to have been an Object of a Moment's Contemplation, though the Cotton Merchants are a Body of Men of as much Worth, Property, and Credit, as any in *Calcutta*, frequently making their Bargains to the Value of ſome *Lacks* at a Time.

104. CONSIDERING the Inſtitution of the Court in general as a Grievance to us, it is almoſt unneceſſary to enter into any particular Explanation more than we have already given. The Clauſes in the Act and Charter, in which the Perſons amenable to the Juriſdiction of the Court are pointed out, apply principally to the Natives, though *Europeans* are alſo affected by them, as they may have Suits againſt Natives; and whether *they* are or are not amenable to the Court, reſts with the Judges to determine. In ſome Caſes, Perſons have ſued and recovered Damages from *Europeans*, when the latter could not

ſue

PETITION.

reſt in Safety: For the Judges of this Court can at Pleaſure determine on the Denomination of a civil Injury, the Degree of its Criminality, by what Statutes it ſhall be tried, what Penalties ſhall be inflicted, and who are and who are not amenable to the Juriſdiction of the Court.

COMMENT.

ſue the ſame Perſons upon Claims which they had againſt them. The Difficulties the *Europeans* experience ariſe moſtly from the Power the Judges have in determining what are civil Injuries and what are not; in applying the whole Law, or any Part of it, as a Rule upon this Occaſion; in aſſeſſing what Damages, or impoſing what Penalties they pleaſe; in inflicting corporal or other Puniſhment, to the Diſgrace of a *Britiſh* Subject. Such Powers, where the moſt notorious Inſtances of Perjury occur every Term, where Witneſſes may be procured to any real or ſuppoſed Fact whatever, where no Redreſs can be obtained but, after a long Interval of ſuffering, at great Trouble and Expence, are highly alarming to us all.

To be at the Mercy of a Villain, who will ſacrifice his Religion to eſtabliſh a Fact by Perjury, is a moſt dreadful Situation, particularly when it is almoſt impoſſible to convict him of the Perjury, as this can only be done by ſwearing to the Words ſpoken by him. In the Caſe of *Nundcomar*, and in various other Cauſes, Witneſſes have been ſet aſide on account of Perjury, but it was found impoſſible to convict them. When we add to this, that many of the Natives procure Means of Subſiſtence by inſtituting Cauſes in the Court, and that they, and many others, pro-

PETITION.

VI. THE Judges have declared that they are, by the Charter of Juſtice, impowered to moderate the Laws of England by the Cuſtoms of this Country; but their Inexperience in aſcertaining theſe Cuſtoms can only be obtained from ſuch Witneſſes as appear before them; and it is in the Breaſt of the Judges to admit or reject what Evidence they pleaſe. This Power has filled your Petitioners with the utmoſt Fears and Diſtruſts; for it has rendered the Body of Juſtices, unacquainted with the Language of the Natives, intirely dependent on their Cuſtoms, and bound by Oath to decide according to them: and if theſe Cuſtoms ſhould not exiſt, no Limitation from them

H

COMMENT.

more Litigiouſneſs, the Expreſſions in the Petition will be deemed inadequate to the Cauſes to which they apply.

VI. THE Power of moderating the Laws of *England* by the Cuſtoms of this Country, we conſider as highly dangerous: Its Operation is general, though it extends more particularly to the Servants of the Company in executive Departments. The Cuſtoms of this Country are local as well as univerſal: What is eſtabliſhed in one Place does not always exiſt in another; and the Cuſtoms, though known in Practice, are not eaſy to be defined. State any Caſe or Situation to a Native, aſk him what is the Practice on ſuch an Occaſion, he will anſwer without Heſitation; but if you proceed to queſtion him at what Time ſuch Cuſtom or Practice aroſe, on what Principles it is founded, what Inſtances of it have occurred, he is led into a Maze, from which he cannot extricate himſelf, as he has never purſued refined Speculations, content to follow where others have led. In croſs Examinations before the Court, Men who have all their Lives been engaged in Buſineſs, and have never been at a Loſs for any Cuſtom, are confuſed and puzzled to the greateſt Degree. Any Cuſtom may be proved and diſproved, and the Proceedings found-

ed

ed upon it confirmed or reverſed at Pleaſure.

107. By this vague and indefinite Power, a Cauſe may be tried one Day by common Law, the next by Cuſtom, and a third by Cuſtom and Law together; and thus by recurring from Law to Cuſtom, and from Cuſtom to Law, an Opening is left for endleſs Subterfuge, and the ableſt Advocate in the Court cannot foreſee how the Cauſe will end. When the Power of rejecting Evidence or admitting it at Option is added, theſe Objections muſt [illegible]

[illegible] receive [illegible] the Judge either by the Act of Parliament or Charter of Juſtice, or the Practice of the Court, have been [illegible] and theſe are made Declarations on the Anſwer returned to the Addreſs of the Aſſembly in 1775, by which this Power is laid to reſt in the Judges.

"The ſame Supreme Wiſdom
"and Goodneſs, which promoted His
"Majeſty to the Throne of
"His Lords in this Country, has
"preſcribed to Him, by His Royal
"Charter, in what Manner, and
"how far, we are to partake
"them; thereby providentially
"guarding againſt any Inconve-
"nience that might ariſe from a
"pre-

H 2

* Printed along with the Trial of Rawlins.

PETITION.

12. *YOUR Petitioners perceived, with heartfelt Satisfaction, that the said Act had provided some Barrier against Oppression, by authorising an Appeal from the Decrees of the Supreme Court to His Majesty in Council, which His Majesty has also been most graciously pleased to recognize in His Charter of Justice: But the Hopes of Relief raised upon this Foundation vanished from before us, when your Petitioners found that the Judges of the Court had not only taken upon themselves to make and alter the Rules of it, but that they could receive or refuse what Evidence they thought proper, and that the Appeal could only be heard under those Rules, and upon the Evidence recorded during the Trial. Removed at such a vast Distance from the Tribunals of Justice, before an unjust or illegal Sentence could be reversed, the Sufferer might fall a Victim to Penury, or perish by Imprisonment. But from an*

COMMENT.

" promiscuous and general Intro-
" duction of them." And again:
" But His Majesty has most
" graciously consulted your Reli-
" gion, Customs, and the Climates
" which you inhabit, and has,
" with most fatherly Tenderness,
" indulged even your Prejudices;
" it is His Royal Pleasure that
" only such of His Laws shall
" be inforced as are conformable
" to your Customs, Climate, Pre-
" judices, and Religion."

109. EVERY Mark of His Majesty's paternal Care and Goodness is received with Acknowledgement and Respect by the Inhabitants of *Bengal*. The Right of appealing, under certain Limitations, we acknowledge to be one of these Marks of Goodness: But many Obstacles occur to frustrate the beneficial Ends proposed by this Care of His Majesty.

1st, The Power of the Judges to admit or reject what Evidence they please, either wholly or in part.

2dly, The Power they have assumed of altering the Rules of Court, and the Power they possess by Charter of making and altering interlocutory Rules and Orders, to which the Pleadings must conform.

3dly, The Distance at which the Tribunal of Appeal lies, the Length of Time which must intervene,

PETITION.

an Appeal under such Circumstances, what Redress can your Petitioners obtain?

13. *YOUR Petitioners entertain all becoming Respect for the Authority of the Charter of Justice, and the utmost Reverence for their Sovereign, whose Sanction it has received; yet*

COMMENT.

tervene, the Trouble, Expence, and Uncertainty, of obtaining Redress by this Mode.

110. A candid Consideration of these Points, will shew the very little Prospect of procuring Redress upon an Appeal.

111. We will now state the Case stronger: Suppose that an unjust Judgement has taken Place, that a heavy Penalty has been decreed, which the Party is unable to pay, and that he is committed to Jail; or we may suppose the Decree to be Imprisonment at once. In a Place where no Assistance of Art can moderate the Heat, where fresh Circulation of Air is indispensibly requisite to Subsistence, a Sufferer is cooped up where neither Exercise or Air are attainable. The narrowest and most loathsome House of Confinement in *Europe*, must be a Palace to a Jail in *India*; yet here the Sufferer must remain eighteen Months at least, indiscriminately mixed with *Hindoos*, with *Mussulmen*, with *Armenians*, *Portugueſe*, *Ceffrees*, vagabond *Europeans*, unfortunate Debtors, or abandoned Criminals, a Prey to Misery and Sorrow: but it is not within Probability that he should survive.

112. THE following Paragraph states the Inconsistency of constituting the same Men Judges of their own Acts: The Axiom is self-evident; it only remains to

shew

PETITION.

yet they cannot but observe, that, by the Powers delegated in this Charter, Men are constituted the Judges of their own Actions, which appears to your Petitioners highly improper and inconsistent. For the Judges of the Supreme Court in Calcutta are empowered to sit also as a Court of Chancery, and in this Capacity to revise, correct, rescind, or confirm, Decisions passed by themselves whilst acting as Judges in a Court of Law; and by another Part of their Institution, they possess the Power, and they alone, of staying Execution in criminal Cases till His Majesty's Pleasure be known. There is a Principle in human Nature which inevitably impresses a Bias upon the Mind in Favour of its own Decisions; and Experience has decided, that Reason and Philosophy are too weak to restrain it: But in all well regulated Communities, when the Consequences of any Principle are foreseen, or found to be fatal, the Wisdom of the Legislature interposes to check its Operation. Your Petitioners have the most perfect Confidence, that the possible Evils of this Power did not occur to their most merciful Sovereign, when His Approbation was conferred on the Charter of Justice, and that they require only to be pointed out, to ensure Redress.

14. *YOUR Petitioners, with all Deference, conceive, that there must be*

COMMENT.

shew how particularly it applies to our Situation in *Bengal*.

113. If there were other Courts upon the Spot to which an Appeal might be made from the Decisions of the Supreme Court, some Part of the Inconveniency arising from this Circumstance would be removed: But there are not; and therefore the Inconsistency of giveing the same Persons the Jurisdiction of a Court of Law, and a Court of Chancery, is the more manifest. The possible Evils of this Power are obvious; when the Weakness of human Nature is considered, they will be alarming. We do not mean to cast any Reflection upon the Judges here, or allude to any particular Circumstance; we reason upon general Grounds and general Principles only.

114. HAVING shewn, in the preceding Sheets, how incompatible the

PETITION.

be some fundamental Error in that Inſtitution which requires a more than ordinary Degree of Temper, Ability, and Integrity, to carry its Purpoſes into Execution; and they do not heſitate to declare, that to adminiſter the Powers appertaining to the Inſtitution of the Supreme Court, without extenſive publick Detriment, and partial Acts of private Severity and Injuſtice, (if it be poſſible at all), requires more Equity, Moderation, Diſcernment, and enlightened Abilities, than they can hope to find in any Men. To what Extent the Judges of His Majeſty's Court may poſſeſs theſe Qualities, your Petitioners do not pretend to decide, and ſtill leſs to aſſert that they do not poſſeſs them at all; but they complain of the Juriſdiction, of the uncontrouled and unlimited Power, with which the Court is veſted, and with the Execution of which no Men are to be truſted.

COMMENT.

the Juriſdiction of the Supreme Court is with the Authority of the Government; how much it has interfered with the Country Courts, overturning or circumſcribing their Influence and Operation; how ſtrongly it militates with the Prejudices, Religion, Cuſtoms, and Sentiments of the Natives; how dangerous its Tendency muſt be, conſidered in a retroſpective View; it is unneceſſary to add, that to carry its Purpoſes into Execution requires a more than ordinary Degree of Temper, Ability, and Integrity.

115. Publick Detriment, and partial Acts of Severity *; for we will not ſay Injuſtice, have certainly taken place; in future they may extend, but can hardly, we conceive, decreaſe.

---

116. WE have now gone through a voluminous Comment upon the Petition, in which we have explained whatever appeared obſcure, and amplified ſuch Parts as before were conciſe. We will add ſome Reflections which are not immediately pointed out by any particular Paſſage in the Petition.

117. The Judges in *Bengal*, as we have before remarked, form a Body diſtinct from the Society.

* Vide the Caſes of Colonel *Watſon*, Mr. *Cottrell*, &c.

They

They are in fact placed above it; from which Situation, Ideas of Power, Independency, and Dignity, ariſe, which they are naturally led to maintain, by carrying the Juriſdiction they are inveſted with into its fulleſt Extent. From this Cauſe, perſonal Piques, Party Prejudices, or private Animoſity, may inſenſibly bias them, even in their publick Deciſions. Full of Ideas of their own Conſequence, they will ill brook any Slight ſhewn to their Perſons or Stations.

118. Judges have their Friends, their Relations, and their Dependants, whom they wiſh to ſerve, and muſt provide for: But a Judge ſhould have no Connections; every Favour conferred at his Requeſt is an Obligation upon himſelf, and muſt be returned. If he be not totally deſtitute of Feelings, a ſtrange Kind of Conflict will enſue between his Gratitude as a Man, and his publick Duty as a Judge.

119. A Court, conſtituted like the Supreme Court, muſt have an infinite Number of Retainers of the Law, whoſe Intereſts are totally diſtinct from thoſe of the Community in general. To promote the Peace and good Order of Society by reſtraining Litigiouſneſs, can be no Part of their Objects, becauſe their Subſiſtence muſt depend upon the Quarrels and Diſputes of Individuals. To foment

theſe Quarrels and Diſputes, and, inſtead of checking, to encourage a Spirit of Litigiouſneſs, muſt be their Employment; for it can hardly be expected that any Men will be content to return to *Europe* in as poor a Situation as when they left it, whilſt ſuch evident Means of enriching themſelves are within their Reach.

120. Law, when ſtudied as a Science, opens and enlarges the Views and Minds of thoſe that apply to it; when perſued only as a Practice by which a Subſiſtence is to be earned, it contracts and debaſes the Underſtanding. Exceptions may however be found to both theſe Poſitions. As far as our Experience enables us to decide, the Retainers of the Supreme Court in general conſider Utility and Self-intereſt only as the Line of their Conduct. There is no Cauſe ſcarcely, however mean and dirty, but what ſome one or other of the Attornies will undertake. We have Reaſon to believe alſo, that they are guilty of Practices reprobated in *England*, and which, if duly repreſented to the Supreme Court, (though nothing could totally reſtrain them) would attract their Cenſures; ſuch as undertaking Cauſes with a View of being paid out of the Damages awarded; upon the ſame Principle as a Quack Doctor engages to adminiſter his Noſtrums, "*No Cure*,

COMMENT.

"*no Pay*;" of procuring falſe Bail, on having an Allowance made them according to the Amount of the Damages for which an Action is brought; and of ſharing the Damages with their Clients.

121. A Body of Men, entering into this Country with ſuch Views, Principles, and Practices, can only be conſidered as a Party of Marauders ruſhing into a Diſtrict, the Inhabitants of which are unprepared for them, and laying Waſte every Thing with Fire and Sword.

122. The Attornies alſo here are totally dependant upon the Judges, whoſe Words and Looks they are obſerved to conſult upon all Occaſions, and againſt whoſe Will and Inclination they will not venture to take up a Cauſe. Many of them conſtitute a Part of the Families of the Judges: To theſe the Natives look up, as conceiving them to enjoy the greateſt Share of their Patronage and Protection, and give to them the moſt Practice. Many of the Advocates here are not independant. In *England*, the Situation and Profeſſion of an Advocate is honourable; he ſtands upon the broad Bottom of the Conſtitution and his own Abilities, and dares to tell a Judge when he is in an Error. Here the Caſe is totally different; and thoſe only who, from their Knowledge and Situation, are able to reſiſt an arbitrary or unconſtitutional Act,

are

are too much afraid * or too prudent to make the Attempt.

123. When the Reflections ſuggeſted by theſe Obſervations are weighed, and it is added, that there is no Preſs for printing in *Bengal*, by the Means of which an Appeal from an Act of Severity or Oppreſſion might be made to the Publick, our Situation will be deemed deſperate. But even if there were a Preſs, can it be ſuppoſed that the Printer would venture to publiſh with Freedom, or that the Court would not interfere? It is improbable. On the contrary, we have Information, that when an Attempt was made to erect a Printing-preſs in *Calcutta*, the Perſon who entered upon this Undertaking was told, that he muſt never publiſh any thing regarding the Court.

124. The *Eſprit du Corps* which animates the Profeſſors of the Law, and leads them to promote and maintain the Intereſts of the Profeſſion in preference to all other Intereſts, is a Principle which may be prejudicial even in a large Kingdom, but muſt be highly dangerous, if allowed to operate in *Bengal*.

125. Few of the Attornies in this Country have had any regular Education for the Profeſſion they have undertaken. This is a peculiar Hardſhip upon us, ſince we

* When Mr. *Crooſſy* claimed a Trial by Jury, no Advocate would undertake his Cauſe.

are already so much at their Mercy. A sick Person considers it as some Relief to have a Physician by him, even though no Hopes of Recovery should be given him; and his Relations are less dissatisfied, provided he dies *secundum Artem*. If we are to be plundered, it would at least have been some Mitigation of the Cruelty of our Situation to be plundered scientifically. People who have already made the first Essays of their Genius to no Purpose in other Professions, take up that of the Law in *Bengal* as a last Refuge.

126. In short, should this Body of Attornies be permitted to swarm in this Country, (and every Year brings new Recruits), we may venture to prophesy, that, in the Course of a few more Seasons, the Riches of the Country, the Funds of the Company, and the Property of Individuals, will all come into their Hands, and no other Order of the State enjoy Affluence, or even Competence. The Expences of carrying on or defending a Suit in Court, of procuring a Probate of a Will, Letters of Administration, or any other Papers, or for any Law Business whatever, are enormous, and far exceed any Ideas that can be formed of them, from an Inspection of the same Charges, made for the same Services or Business in *England*. Whilst the Institution of the Mayor's Court subsisted, these Expences

pences were moderate and trifling in Compariſon of thoſe now allowed: At that Time (to give one Inſtance) Letters of Adminiſtration were to be procured for 60 Rupees or 6*l.* Sterling; but, under the Supreme Court, they cannot be obtained for leſs than 160 Rupees, or 16*l.* Sterling. In a Country where the Society is ſmall, theſe Reflections muſt have the greateſt Weight.

127. We have already given it as our Opinion, that the Judges will not fail to attempt the Revival of the old Prejudices of the People in *England* againſt their Fellow-ſubjects in *Bengal*: probably they will affirm, that to obtain Redreſs of real Grievances is not ſo much our Object, as to emancipate ourſelves from the Reſtraints of the Law; and to give this Argument its utmoſt Scope, the Judges muſt, on the other Side, repreſent themſelves as the Protectors of the Natives againſt Oppreſſion. This is the Language they have univerſally held.

128. But, if they ſhould ſtate this Argument fairly, we have nothing to fear from it. The People of *England* will then find, that this boaſted Protection, this Barrier againſt Oppreſſion, is conſidered by the Natives themſelves as one of the moſt ſevere Scourges they were ever viſited with. And ſo perfect is our Conſtitution in this Matter, that nothing will prevent the

the * Natives complaining in a Style ſuited to their Sufferings and Feelings, but Fear of the Power of the Court, or ſome undue Influence; and ſhould any Repreſentations to the contrary, by the Natives themſelves, be produced, we can and do declare, that we believe they will be made by none but ſome of the loweſt or moſt profligate amongſt them; or if the Name of any reſpectable Perſon ſhould be ſeen to ſuch Repreſentation, an undue Influence or Fear muſt have been his Inducement to ſubſcribe.

129. In ſome of the Deciſions of the Judges, it is difficult for us, unlearned in the Law, to determine upon what Grounds they had formed their Judgement. Attending the Trial of a Cauſe, and reading the Depoſitions upon Paper, produce very different Sentiments. The Language held by the Chief Juſtice on many Occaſions from the Bench has ſurpriſed us, and has given Riſe to theſe Reflections. We appeal to the *viva voce* Evidence of Mr. *William Hickey*, (now in *England*), who has practiſed for upwards of a Year in the Court, for further Information upon this Head.

130. In all thoſe Caſes which the Judges may think proper to ſtate as Proofs of the Delinquency

* Since this Comment was written, Petitions from the Natives, ſetting forth the Grievances they ſuffer from the Juriſdiction of the Supreme Court, have actually arrived in this Country. See Appendix.

of

of the Servants of the Company, and the beneficial Effects to the Natives from their Interference, they muſt have a manifeſt Advantage over us: one of theſe Caſes will probably be a Cauſe which has lately been decided, and is here called *The Patna Cauſe*.

131. But if we do not greatly miſunderſtand the State of this Cauſe, we believe that, from a fair and impartial Diſcuſſion of it, a contrary Inference may be drawn; and that it will be found that the Judges have taken upon themſelves to hear and decide on a Matter not amenable to their Juriſdiction, and to give a Sentence the moſt ſevere and cruel perhaps that is to be found on any Record.

132. To Men of plain Underſtandings we apprehend the following ſhort Account of this Matter will be ſufficient; it may at leaſt be contraſted with that ſent home by the Judges themſelves.

133. *Mirza Shabbaz Beg*, an Inhabitant of *Patna*, dies, and leaves two Claimants to his Eſtate, his Widow *Nadara Begum*, and a Nephew by the Name of *Behader Beg*, brought at his Deſire from *Cabul*, and ſuppoſed to be intended for his Heir, who claims in the Right of his Father *Allum Beg*, abſent. It appears that, by the *Mahomedan* Law, a Wife is entitled to One Fourth of her Huſband's Eſtate, and that the remaining

Three

COMMENT.

Three Fourths go to the Heirs at Law.

134. At her Husband's Death, the Widow took Possession of his whole Property, and the Deeds and Papers belonging thereto, pleading in her Favour a Deed of Gift of her late Husband, and other Deeds, by which the sole Right of his Property was vested in her, to the Exclusion of the other Heirs.

135. A Complaint was thereupon made to the Council of *Patna*, by the Nephew or Brother's Son, for his Father's Share of his deceased Uncle's Estate; and the Council, as the Parties were *Mahomedans*, and the Point in Issue depended on their Laws of Inheritance, referred the Examination of the Cause to the Chief Officers of the *Mahomedan* Law, *viz.* the *Cawzy* and the *Mufties*, (who have long been established as a Court of Judicature in that Province), to examine it, and report thereon to them.

136. This Court, having examined the Cause in the Manner customary to themselves, reported to the Council, That the Deed of Gift, and other Deeds, appeared to them to have been executed after the Death of *Shabbaz Beg*, and not worthy of Credit: That if the Execution of the Deeds in the Life-time of *Shabbaz Beg* had been proved, they were still informal on

a Point

COMMENT.

a Point of *Mahomedan* Law, which requires, that to make Deeds of Gift valid, Poſſeſſion ſhould be given at the Time of executing or delivering them over; and that, as no Proof of giving Poſſeſſion had been offered, the Deeds ought to be deemed invalid, and the Eſtate divided according to the *Mahomedan* Law; *viz.* One Fourth to the Wife, and Three Fourths to the Nephew, excepting an *Ultumgau*, or Grant from Government, which they deemed indiviſible, and therefore belonged ſolely to the Heir at Law: And this Report they accompanied with a *Fetwah* or Deciſion agreeing therewith.

137. The Council of *Patna* paſſed a Decree confirming this Report and *Fetwah*, with a ſingle Exception in Favour of the Widow, that the Heir at Law ſhould pay her One Fourth of the Rents of the *Ultumgau*, or Royal Grant, for her Maintenance and Support during her Life. The Widow refuſing to abide by this Deciſion, or to admit of its being carried into Execution, a Caſe which would by any Court in *England* have been treated as a high Contempt, Coercion was neceſſarily uſed to carry this Decree into Execution.

138. In this Stage of the Buſineſs, the Widow made Application to the Supreme Court of Judicature, and Warrants were ſent up againſt the Plaintiff, and the *Cawzee*,

COMMENT.

and other Officers of the *Patna* Court of Juſtice.

139. The Governor General and Council, conceiving this a Caſe in which the Rights of the Government were concerned, were pleaſed to order their Attorney and Counſel to defend the Suit, and to bail the Parties in the enormous Sum of four Lacks of Rupees *.

140. In the Courſe of the Trial before the Supreme Court, we underſtand ſix Evidences were produced to the Forgery of the Deeds after the Death of *Shabbaz Beg*, one of whom depoſed to his having written them himſelf; but that theſe Evidences were rejected. We likewiſe underſtand that the Cauſe was chiefly decided on the Evidence of *Zeckeriab Cawn*, one of the Perſons whom they charged with the Forgery. We will not preſume to ſay that the Court admitted one Evidence and rejected the other without ſufficient Grounds; but we ſhall at leaſt deem any Repreſentation of the Trial partial that does not include all the Evidence, whether admitted or rejected. However, we cannot help obſerving, that the Evidence of *Zeckeriab Cawn* is full of Contradictions.

141. But whether the Forgery was or was not actually committed, we apprehend, would beſt have been determined by a criminal Proſecution; but this, we are likewiſe

* Above 40,000*l.* Sterling.

told,

told, has been refuſed to repeated Applications; and the People, when apprehended on this Charge by *Sudder ul Hock Cawn*, the *Naib* Subah, were, we underſtand, releaſed by a Writ of *Habeas Corpus* from the Court. This Point therefore, however material to a true Underſtanding of the Merits, will probably never be brought to Iſſue.

142. We are likewiſe told, that the Merits of this Cauſe were not the Points in Iſſue before the Court, but that it was decided on a Defect of Form in the Proceedings of the Council of *Patna*, and on a Point of Law that *Delegatus non poteſt delegare*; and that the Council, by their Conſtitution, ought to have tried the Cauſe themſelves, and not have admitted the Report of the Doctors of the *Mahomedan* Law as the ſole Rule of their Deciſion.

143. The Concluſion of the Whole is, that a Judgement has paſſed againſt *Behader Beg*, acting as Repreſentative of *Allum Beg* his Father, and Plaintiff, and againſt the *Cawzee* and *Mufties*, Doctors of the *Mahomedan* Law, acting by Orders from the Council at *Patna*, with Damages for three *Lacks* of Rupees, 36,000 *l.* Sterling, though it is not proved that they are worth a ſingle Rupee, or had more than a few hundred Rupees a Month Salary. Our Information upon this Caſe is derived from a Report

of the Commiſſioner of Law Suits for the Company; and to that we refer*.

144. The Council have given theſe People up in Execution of Judgement, and probably to perpetual Impriſonment. The *Cowzee* alone has eſcaped this Ignominy and Misfortune by a ſudden Death; happy in having thereby avoided ſuch complicated Miſery. The Senſe entertained of this Tranſaction by the Inhabitants of the *Patna* Province, will fully appear by the Copy of their Petition annexed.

145. If the Judges of the Supreme Court, after having decided that the Parties in the Cauſe were amenable to its Juriſdiction, had ſummoned the *Cowzee* and *Mufties* before them, had aſcertained from them the general Mode of Practice and Proceeding, and the Principles upon which they had made this Enquiry and Report; and after ſatisfying themſelves upon theſe Points, had ordered the Cauſe to be tried *de novo*, on Account of any Informality or Irregularity, it would have impreſſed the Publick with the higheſt Ideas of their Equity, Candour, and Moderation.

146. But to give a Sentence of perpetual Impriſonment (for the Deciſion of the Court is tantamount to it) againſt theſe Law Doctors,

* A full and accurate State of this Cauſe will ſhortly be laid before the Publick.

of

of whoſe Corruption not the Shadow of Proof was exhibited, we cannot but conceive to be cruel and ſevere. Whether in the Circumſtances and Situation of the Council of *Patna*, who are at the ſame Time a Council of State and Council of Revenue, and occaſionally a Board of Juſtice, conſidering the Cauſe of Action, they could adopt a more proper Mode of Proceeding than by delegating the Enquiry to theſe People, is a Queſtion which naturally occurs. We think they could not; and further add, that the Practice of delegating Matters, the Objects of their Enquiry and Deciſion, is eſtabliſhed by long Uſage, and that there would be no Poſſibility without it of compaſſing the Buſineſs of their Office.

147. The uniform Cuſtom of *Hindoſtan*, for Ages, has been to confine Felons of a certain Degree to work upon the publick Roads in Chains. When the Judges of the Supreme Court of Judicature arrived in *Bengal*, there were many of thoſe Felons upon the publick Works, under the Charge of the Superintendant of the Police. Many of theſe Men were ſuffered to bring Actions againſt the Superintendant of the Police for falſe Impriſonment, and all of them obtained Rules to ſhew Cauſe why they ſhould not be ſet at Liberty, or by ſome Means were brought before

one

one of the Judges, in consequence of which they were discharged from Confinement, and from the publick Works. Not many Days had elapsed after this extraordinary Exertion of Power, before the whole Settlement was filled with the utmost Consternation by the most daring Robberies, committed by armed Bands of these *poor oppressed People*.

148. Many Families were totally and absolutely ruined by these most daring Insults upon Society; and it is impossible to say how far they might have proceeded, had not the Alarm reached the Judges themselves, when the succeeding Superintendant of the Police, Mr. *C. S. Playdell*, was permitted to seize them, and deliver them over to the *Phousdar*, and Seventy of them were capitally convicted and executed. Seventy of these Men, who had been, and could long have continued to be, useful to the Publick, were thus cut off at once in consequence of this wanton Exercise of Authority, in releasing Men confined by the Laws and Customs of their own Country, and which was at that very Time a Punishment established by Law in *England*.

149. Although we have already entered into a long Discussion on the Subject of the Application of the Laws of *England* to this Country, and of the Practice of the Supreme Court, yet the Subject may

may be made clearer by the following Detail.

150. The Country Courts, however imperfectly conſtituted, did nevertheleſs afford great Relief to the Natives, both in Form of Proceſs and Practice; and are better adapted to their Habits and Prejudices than the Supreme Court itſelf. Without Doubt they are capable of Improvement, and they would then form as compleat a Syſtem of Judicature as the People of this Country deſire themſelves, or as the State of Civilization they are now in, admits of. —Theſe Courts are ſo diſperſed through the Country, that the People may almoſt every where have Juſtice from them at their own Doors.

151. The Suitors are neither vexed by a long or rigorous Progreſs; they have no Attornies nor Advocates to pay; each Man may either plead his own Cauſe, or employ his immediate Servant to do it for him; he may either appear himſelf, or by his * *Vakeel*. Exceſſive Bail is never required. The Judge, acquainted with the Language, and aſſiſted by the Experience of the Natives, *Hindoos* and *Muſſulmen*, decides by Equity, natural Juſtice, or eſtabliſhed Uſage. Exceptions of Form are never taken to the Pre-

* Deputy, Agent.

judice

judice of ſubſtantial Juſtice. Heavy Damages, or rigorous Fines or Amerciaments, are abſolutely unknown; even the laſt Reſort of committing to Priſon in Execution of Judgement, is not attended with the Cruelty and Severity incident to our Gaols. The Priſons are never loathſome nor unwholeſome Dungeons, nor crowded with unhappy Sufferers. The Gaolers have not the Power of extorting from, or robbing their Priſoners, for allowing them common Neceſſaries; in ſhort, in no Inſtance is the Proceſs either ſo grievous or expenſive as in our Courts.

152. It is needleſs to repeat what we have already ſaid of the Proceſs of the Supreme Court; ſomething however may be here added.

153. The Law of *England* is open to every Man; and although the Act of Parliament deſcribes only a *Part* of the Inhabitants of theſe Provinces as within the Juriſdiction of the Supreme Court, yet in Fact the whole of the Inhabitants are open to its Proceſs; and a Suit muſt be gone through on the Plea to the Juriſdiction, before even that Plea can be admitted *. Thus an Oath being made to a Debt, and that the

* This Plea, though admitted in one Action, does not exempt a Native in other Suits, where the ſame Plea, by the ſame Perſon, muſt be rehearſed and re-argued, before it can be admitted a ſecond Time.

Party

Party is amenable to the Juriſdiction of the Court, a Warrant or other Writ iſſues, on the ſimple Application of an Attorney, to bring the Debtor to *Calcutta*; and let the Cauſe of Action be frivolous or well-grounded, or the Party be or not be within the Juriſdiction, or his Diſtance from the Court be 100 or 500 Miles, ſtill he muſt either appear, or give Bail ſatisfactory to the Sheriff, or be committed to the moſt loathſome and deteſtable Gaol in the Univerſe.

154. The Terrors of this Gaol, and of the Proceſs deſcribed above, are ſo great, that there was an Inſtance, on the firſt Eſtabliſhment of the Court, of a Warrant being ſerved by Miſtake on the Plaintiff, and of his paying the very Debt he had himſelf ſued for.

155. WE now come to the Prayer of the Petition, which is calculated to redreſs ſuch ſpecifick Grievances as we ſuffer from the Inſtitution of the Court of Judicature. But no effectual Remedy can be given, except the Repeal of the Act of Parliament as far as it relates to the Adminiſtration of Juſtice, and the Appointment of another Court better adapted to our Situation and Circumſtances. The leading Facts and Principles are, we conceive, ſtated ſufficiently clear

for the Information of the Legiſlature, ſhould they be diſpoſed to gratify our Expectations.

156. If our publick Avocations had not been ſo many and ſo great, and if the Lateneſs of the Seaſon had allowed more Time, we might have digeſted theſe Obſervations into a more perfect Form. In drawing them out we have had two principal Objects in View; one to explain the Petition to Parliament; the other to ſupply Materials either for advancing the Cauſe, or to guard againſt any Attacks that may be made upon the Petition or the Petitioners.

157. There are other Evils which we ſuffer from the Act of Parliament: We can only mention, but cannot expatiate upon them; we mean the Reſtrictions laid upon the Trade carried on by *Britiſh* Subjects. Theſe Reſtrictions, were, with the others which we have complained of, the Effect of Prejudices raiſed by falſe and injurious Reports. The Natives of this Country muſt, *cæteris paribus*, ever have a manifeſt Advantage over *European* Traders; and it is abſurd to ſuppoſe that any perſonal Influence can operate to an Excluſion of the Natives, though we admit that Perſons in particular Offices ſhould be reſtrained. But it muſt be confeſſed, that nothing can be more impolitick than to permit the *Danes*, *Dutch*,

MVSEVM
BRITANNICVM

COMMERCE

Dutch, French, and other Foreigners, our Rivals and Enemies, carry on a Commerce which is not permitted to the Subjects of Great *Britain.*

Calcutta,
7 Apr. 1779.

H. COTTRELL,
T. D. PEARSE,
AL. HIGGINSON,
P. M. DACRES,
JOHN PETRIE,
SIMEON DROZ,
SAMUEL TOUCHET,
J. SHORE,
HENRY WATSON,
JOHN EVELYN,
HENRY VANSITTART,
G. G. DUCAREL.

COMMENT.

Dutch, French, and other Foreign-
ers, our Rivals and Enemies, to
carry on a Commerce which is not
permitted to the Subjects of Great
Britain.

H. Cottrell,
T. D. Pearse,
Al. Higginson,
P. M. Dacres,
John Petrie,
Simon Dyer,
Samuel Touchet,
J. Snore,
Henry Watson,
John Evelyn,
Henry Vansittart,
C. C. Ducarel.